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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 661.

NAPOLEON HILL AND THE MEMPHIS CITY FIRE AND GENERAL INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TENNESSEE AND THE COUNTY OF SHELBY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED MARCH 6, 1877.

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1 THE STATE OF TENNESSEE.

Pleas before the Supreme Court of the State of Tennessee, for the western division thereof, at Jackson, on the fourth Monday of September, A. D. 1876.

Present: Hon. James W. Deaderick, chief justice, Peter Turney, Robert McFarland, Thomas J. Freeman, and John L. T. Sneed, judges.

Be it remembered that heretofore, to wit, on the 5th day of April, A. D. 1873, the following transcript of a record was filed in the office of the clerk of the supreme court of said state, at Jackson, to wit:

STATE OF TENNESSEE AND COUNTY OF SHELBY *vs.* NAPOLEON HILL AND MEMPHIS FIRE AND GEN'L. INS. CO.	No. 214 Shelby Ch'y Docket.

2 STATE OF TENNESSEE.

Transcript of the record in case of State of Tennessee and County of Shelby vs. Napoleon Hill and others, from the Second Chancery Court of Shelby county, Hon. Saml. P. Walker, chancellor presiding, in words and figures as follows:

Cost Bond.

We, the County of Shelby, and W. W. McDowell, surety, and N. Hill and D. E. Myers, surety, acknowledge ourselves indebted to the State of Tennessee in the sum of two hundred and fifty dollars, to be void if the said W. W. McDowell, surety for the County of Shelby, and D. E. Meyers, surety for N. Hill et als., complainants and defendants in a case made upon an agreed state
3 of facts to be determined by the chancellor, shall pay all such costs as may be awarded against them by the court in its decree and orders in said bill.

This 20 day of January, 1873.

[SEAL.]
[SEAL.]
NAPOLEON HILL, [SEAL.]
By D. E. MYERS, *Attorney.*
D. E. MYERS. [SEAL.]

Bill.

STATE OF TENNESSEE AND COUNTY OF SHELBY *vs.* NAPOLEON HILL.	Submitted on an agreed state of facts.

It is agreed that the Memphis City Fire and General Insurance Company was duly organized under its charter granted by the Legislature of the State of Tennessee, on January 24th, 1870; that its capital stock regularly subscribed amounts to the sum of

4 $250,000.00, divided into 2,500 shares of $100.00 each; that the above-named defendant, Napoleon Hill, was, throughout the year 1872, the owner of fifty (50) shares of said stock of said Ins. Co. of the value of $1,000.00. That the State of Tennessee and the County of Shelby, claiming the right under existing revenue laws to tax said stock, caused said 50 shares thereof to be assessed against the said Hill for the year 1872, at the value aforesaid. The state imposing a tax thereon of 40 cents on the one hundred dollars of said valuation, making a state tax of four dollars ($4.00), and the said county has levied a tax of $1.20 on the one hundred dollars of valuation, making a county tax of $12.00, which the state and county

5 now demand payment of from said Hill.

The legality of said tax is disputed by said Hill. He denies the right or power of said state and county to assess said stock for taxation as aforesaid. He claims that under the 17th section of the Memphis City Fire and General Insurance Company's charter, which is as follows: "That there shall be levied a state tax of one-half of one per cent. upon the amount of capital stock actually paid in, to be collected in the same way and at the same time as other taxes are by law collected, which shall be in lieu of all other taxes and assessments," said shares of stock are exempt from taxation, except the tax of one-half of one per cent. on the amount actually paid in on each share of said capital stock, in accordance

6 with said company's charter, which is admitted has been regularly and duly paid by the Memphis City Fire and General Ins. Co. to the State of Tennessee.

And that any law which imposes any other or additional tax on said shares of capital stock impairs the obligation of the contract in said insurance company's charter, and is in violation of the constitution of the State of Tennessee, and in violation of the Constitution of the United States of America, and therefore null and void. It is further agreed that the defendant's said company, (The Memphis City Fire and General Ins. Co.,) ever since its organization, has filed with the comptroller of the State of Tennessee, semi-annually, in the months of July and January of

7 each year, a synoptical statement of the business operations of the company and the capital stock subscribed and paid, under the oath of the cashier, in accordance with the 17th section of its charter, and in every way conformed to the provisions of its charter since its organization.

It is agreed that the charter of the Memphis City Fire and General Insurance Company, and revenue and other laws so far as applicable to the subject, shall be treated as a part of this case, and may be read on the trial, from any book or document containing the same, as if they were copied herein. It is agreed that the Second Chancery Court of Shelby County may try

8 this case, and shall decide whether or not the said state and county of Shelby have the right to impose said taxes on said

stock, in addition to the aforesaid one-half of one per cent. on the amount paid in on each share of capital stock, which has been paid to the state under the aforesaid 17th section of said company's charter, and from the decision of said court either party may appeal on giving bond for costs.

It is agreed, if the final decision shall be in favor of the state and county aforesaid, the judgment shall be rendered against the said Napoleon Hill aforesaid for the aforesaid sum of $4.00 in favor of the state, and the said sum of $12.00 in favor of said county
9 of Shelby, with interest from and after January 1st, 1873.

On the other hand, if the final decision should be in favor of defendant Napoleon Hill, then the judgment shall be that said taxes are illegally assessed, that said shares of stock are exempt from all other taxation than the one-half of one per cent. on each share of stock subscribed, as provided in the aforesaid 17th section of said charter, and that the collection of the aforesaid taxes be enjoined, and for such other appropriate decree as the court may deem proper to render in order to protect said Hill or his assigns from taxation on said stock, as well as the other stockholders in said company.

Pending the final decision of this case, the said state and county agree to suspend the collection of said taxes from the said
10 Hill, and also to suspend the collection of like taxes assessed against the other stockholders in said Memphis City Fire & Gen. Ins. Co. The costs of this suit will abide the final result. It is further admitted that said Memphis City Fire & General Ins. Co. has duly made its deposit of $20,000 in state bonds, and has in all respects conformed to existing laws regulating insurance companies chartered under the laws of this state. It is further agreed that the said Memphis City Fire & General Ins. Co. has been doing business since its organization in the county of Shelby and State of Tennessee during the year 1872.

W. W. McDOWELL,
Sol. for Compl'ts.

STATE OF TENN. & COUNTY OF SHELBY,
By W. W. McDOWELL.
NAPOLEON HILL,
By D. E. MYERS, *his Att'y.*

11 STATE OF TENNESSEE, }
SHELBY COUNTY. }

Personally appeared before me, M. D. L. Stewart, C. & M., D. E. Myers, att'y for defendant, who makes oath that the controversy in this case is real and the proceeding in good faith to determine the rights of the parties. D. E. MYERS.

Subscribed and sworn to before me, Jan'y 20, '73.
M. D. L. STEWART, *C. & M.*
By CRABTREE BELCHER, *D. C. & M.*

Filed 20th January, 1873.

Exhibits.

An act incorporating the Baptist Education Society of Tennessee. Passed February 27, 1869.

* * * * * *

12 Section 11. Be it further enacted, That William N. Wilkerson, D. C. Trader, L. V. Dixon, A. Vaccaro, Henry J. Lyren, W. H. Moore, M. D. L. Stewart, J. W. Knott, and such other persons as may hereafter associate with them, be, and they are hereby, created a body politic and corporate by the name and style of the "Memphis City Fire and General Insurance Company," and shall continue and have succession unto them, their assigns, and associates, for the term of fifty years after their due organization as hereinafter provided for, and make such rules and by-laws as they please, not inconsistent with the laws of this state; may have and use a common seal, with power to alter the same at pleasure; and may by their corporate name sue and be sued in any court of law or equity in this state or elsewhere, as a natural person might or could.

13 Sec. 12. Be it further enacted, That the said corporation shall be capable in law of purchasing, holding, and conveying any and all kinds of estate, real, personal, or mixed, and of receiving in trust from any person, money, jewels, plate, or other valuable thing, and of giving their acknowledgments therefor in such form as the directory of said corporation may deem best suited to the protection and convenience of the depositor and the company. And the said corporation shall hereby be authorized to loan their surplus funds on any public stocks of any incorporated company, or of the United States, or either of them, or to invest them in any real or personal estate, or chose in action, or other good securities.

14 Sec. 13. Be it further enacted, That the capital stock of said company shall be one hundred thousand dollars, with the privilege of increasing the same at the pleasure of the company to one million of dollars, which stock shall be divided into shares of one hundred dollars each, but no subscriptions to said stock shall be valid until ten per cent. thereof is paid into the corporation; but said corporation may commence their business whenever the sum of fifty thousand dollars has been subscribed to the capital stock. The stockholders shall be entitled to one vote for each share of stock held by them in any stockholders' convention, to be sent either in person or by proxy.

15 Sec. 14. Be it further enacted, That said corporation shall, on the first Monday in December in each year, hold a convention of the stockholders, who shall then, in addition to the general business of said company, elect from their number seven directors, and a president, vice-president, and a cashier, who need not be stockholders, who shall manage and control the business of the corporation, subject to the by-laws which shall be adopted for

the government of the company by the stockholders. And the said president, vice-president, and cashier shall, before entering upon the discharge of their duties, enter into such bond with security as may be prescribed by the by-laws for the faithful discharge of their several duties; and the said stockholders may hold meetings at any other time, upon the call of three or more stockholders, after giving ten days' notice thereof in a public newspaper, published in the city of Memphis; and they may at such meeting transact any business that
16 might have been done or omitted at any regular meeting, provided always, that a majority of all the stockholders, counting by number of shares, shall be represented at such meeting.

Sec. 15. Be it further enacted, That the president, or in his absence the vice-president, with the cashier, shall have full power and authority to make any assurance upon any fire, marine, or river risks, or risks upon any freights, moneys, goods, wares, merchandise, or other valuable thing, or upon live-stock, life, or health, and to fix the premiums therefor, and generally to do all things necessary and proper in carrying on the general insurance business; and all policies by them issued, when signed by the president or vice-president, as the same may be, and countersigned by the
17. cashier, with the seal of the company attached, shall be binding upon the corporation to the same extent a like contract can bind a natural person.

Sec. 16th. Be it further enacted, That the unpaid stock subscribed for by any person may be called in by the directors at any time by installments not exceeding twenty per cent. of each share subscribed, upon a public notice of such call published in one of the city papers of Memphis for the space of thirty days, and if any shareholder shall fail or refuse for the space of thirty days after such call is due to pay the same he shall forfeit his stock to the company, or be subject to suit therefor, at the option of the company. A lien is hereby declared in favor of the corporation on any stock in said company owned by any person indebted to the company, whether as principal or surety for others, and whether such indebtedness be due or has not matured, and the same
18 shall, at the option of the directors, be held as security until such indebtedness be paid and discharged, and upon failure to pay the same by the principal debtor or his surety for twenty days after its maturity, the directors shall have power to sell the said stock, or so much thereof as may be necessary to satisfy such indebtedness, after giving ten days' notice of the time and place of such sale in some public newspaper published in Memphis.

Sec. 17. Be it further enacted, That there shall be levied a state tax of one-half of one per cent. upon the amount of capital stock actually paid in, to be collected in the same way and at the same time as other taxes are by law collected, which shall be in
19 lieu of all other taxes and assessments, provided the said corporation shall file with the comptroller of the state, semi-

annually, in the months of July and January in each year, a synoptical statement of the business operations of the company and the capital stock subscribed and paid, under the oath of the cashier.

Sec. 18. Be it further enacted, That the stock in said company may be assigned and transferred as other property, but no sale or transfer shall be valid until the same is entered upon the books of the company, nor shall any such sale, transfer, or assignment be valid while the attempted assignor shall be indebted to the corporation, either as principal or surety.

* * * * * * * *

20 Sec. 94. Be it further enacted, That this act take effect from and after its passage.

Passed January 24, 1870.

W. O'N. PERKINS,
Speaker of House of Representatives.
D. B. THOMAS,
Speaker of the Senate.

I, Andrew J. Fletcher, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of sections 11, 12, 13, 14, 15, 16, 17, 18, and 94 of an act of the General Assembly of the State of Tennessee, the original of which is now of record in my office.

In testimony whereof I have hereunto subscribed my official signature, and by order of the governor affixed the great seal of the State of Tennessee, at the department, in the city of Nash-
21 ville, this first day of March, A. D. 1870.

A. J. FLETCHER,
Secretary of State.

Final Decree.

On, to wit, March 27, 1873, in the Second Chancery Court of Shelby County, Hon. S. P. Walker, chancellor presiding, the following proceedings were had, to wit:

In the 2d Chancery Court of Shelby County.

STATE OF TENNESSEE & SHELBY COUNTY
vs.
NAPOLEON HILL & OTHERS, Stockholders in the Memphis City Fire and General Ins. Company.

22 This cause came on this day, March 27th, 1873, upon the agreed state of facts and the record, to be heard before the Hon. S. P. Walker, chancellor, and the court being of opinion that the state and county tax for the year 1872 against defendant upon his stock in said Memphis City Fire and General Ins. Co. was illegally assessed; and the court being further of opinion said Ins. Co. and the defendants, the stockholders therein, are not liable for

any tax, except the tax of ½ *one-half* of one per cent., provided for in the 17th section of said company's charter.

It is therefore ordered and adjudged and decreed by the court, that the said tax levied by complainants, the State of Tennessee and county of Shelby, upon the value of the shares of stock held
23 by defendant Hill, and all other stockholders in said Ins. Co., is illegally assessed. That the said defendant Hill, and the other stockholders in said company, are not liable for any tax, except the tax of ½ of one per cent. specified in the 17th section of said Ins. Co.'s charter.

It is further ordered and decreed (in accordance with said agreed case) that the State of Tennessee and County of Shelby, its officers, tax collectors, agents, and attorney, be perpetually enjoined from collecting the tax assessed against the defendant, Napoleon Hill, and the other stockholders in said Ins. Co., upon the value of their stock held in the same for the year 1872.

It is further ordered that the complainants, State of Ten-
24 nessee and Shelby County, each paying one-half of the costs to be certified according to law.

From which decree the complainants, the State of Tennessee and County of Shelby, pray an appeal to the next term of the Supreme Court of Tennessee for the Western Division, which is granted.

Appeal Bond.

We, the County of Shelby and W. W. McDowell, acknowledge ourselves indebted to Napoleon Hill and others in the sum of two hundred and fifty dollars, to be void if the said County of Shelby, who has prayed for and obtained an appeal from a decree of the Second Chancery Court of Shelby County, in a cause in
25 which the State of Tenn. and County of Shelby are complainants, and Napoleon Hill and others are defendants, to the next term of the Supreme Court of Tennessee for the District of West Tennessee, to be held at Jackson, Madison county, on the first Monday in April next, shall pay all such costs as shall be awarded against the county by said supreme court. This April 2nd, '73.

COUNTY OF SHELBY. [SEAL.]
W. W. McDOWELL. [SEAL.]

(Endorsed:) Filed 2d day of April, 1873. M. D. L. Stewart, C. & M.

And at the September term, A. D. 1876, of the Supreme Court of Tennessee for the western division thereof, at Jackson, the following opinion was delivered:

26 [Here follows opinion and dissenting opinion (MS. record, pp. 26–97).—See record in No. 646, Farrington vs. The State, &c., pp. 4–18.]

And on Monday, November 20th, one of the days of the September term, 1876, of said supreme court, the following decree was pronounced in this cause, to wit:

THE STATE OF TENNESSEE & THE COUNTY OF SHELBY
vs.
NAPOLEON HILL & THE MEMPHIS FIRE & GENERAL INSURANCE COMPANY.
No. 214 Shelby Ch'y Docket.

This cause was heard upon the transcript of the record from the Second Chancery Court of Shelby County, and after argument by counsel and full consideration by the court, it appearing there is manifest error therein, it is therefore ordered, adjudged, and
98 decreed by the court that the decree of said chancery court be reversed, vacated, and annulled.

And upon consideration of the claim made by defendant Napoleon Hill, that the revenue act of the Tennessee Legislature of 1869–70, chapter 81, section 1, providing "that all shares of stock in any bank, corporation, or company now or hereafter incorporated by or in pursuance to any law of this state, or any other state, and all public bonds or stocks, except United States bonds, which by the laws of the United States are expressly exempt from taxation, shall be valued and assessed and subject to taxation," under and by virtue of which act defendant's shares of stock in the Memphis Fire and General Insurance Company were assessed for state and
99 county taxes, impaired the obligation of the contract of exemption from taxation contained in the charter of the said Memphis Fire and General Insurance Company, and violated section 10, art. 1, of the Constitution of the United States, this court doth adjudge and decide this point, and claim against the defendant, on the ground that the shares of stock in the said Memphis Fire and General Insurance Company are not the property or thing exempted by the charter of said company, but other and different, and so not within the protection of the said charter and of said section of the Constitution of the United States.

It is therefore further ordered, adjudged, and decreed by this court that the sum of $4.00 state tax and $12.00 county tax were properly assessed as state and county taxes for the year 1872 upon the
100 shares of stock of defendant Napoleon Hill, in the said Memphis Fire and General Insurance Company, and that the State of Tennessee do recover of said Napoleon Hill, and of said insurance company as his surety, the said sum of $4.00 state tax, and that the county of Shelby do also recover of the said Napoleon Hill, and of said company as his surety, the said sum of $12.00, for all which execution may issue, and that both of said sums bear interest at the rate of six per cent. per annum from the first day of January, 1873, until paid.

It is further ordered, adjudged, and decreed by the court that the State of Tennessee and County of Shelby recover of said Napoleon Hill and his surety, the said insurance company, the costs of

this cause in this court and the court below, for which exe-
101 cution may issue.

Petition for Writ of Error and Citation.

To the Hon. Jas. W. Deaderick, Chief Justice of the Supreme Court of the State of Tennessee:

The petition of Napoleon Hill and the Memphis City Fire and General Insurance Company against the State of Tennessee and the County of Shelby.

Petitioners respectfully represent unto your honor that lately there was pending in the Supreme Court of the State of Tennessee, at Jackson, a cause or suit wherein the State of Tennessee and the County of Shelby, were complainants and your petitioners
102 were defendants, in which a final decree was rendered in said supreme court, (which is the highest court of judicature in the State of Tennessee,) by the judgment thereof, at the September term, 1876, against your petitioners, the defendants, and in favor of the complainants respectively in said cause or suit. Petitioners further represent to your honor, that in the record, proceedings, and judgments in said cause there was drawn in question one of the matters embraced in Sec. 709 of the Revised Statutes of the United States, to wit: there was drawn in question in said cause or suit the validity of a statute of the State of Tennessee, on the ground of its being repugnant to the Constitution of the
103 United States, and the decision of said Supreme Court of Tennessee and the judgment thereof was in favor of the validity of said statute. Your petitioners are advised by counsel that they are entitled to have said judgment and decree of the said supreme court reviewed in the Supreme Court of the United States.

To the end, therefore, that your petitioner may remove said cause into the Supreme Court of the United States, he prays your honor to endorse hereon an allowance of a writ of error, and that your honor will sign the proper citation in said cause, in order that your petitioners may have said cause reviewed, and that the error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties.

104 And your petitioners, as in duty bound, will ever pray.

MYERS & SNEED,
Sols. for Petitioners.

Supreme Court of the State of Tennessee, at Jackson, Nov. 24th, 1876.

The writ of error and citation prayed for in the foregoing petition are granted and allowed, pursuant to law in such cases, there being a federal question involved in said suit.

JAS. W. DEADERICK, *C. J.*

(Endorsed:) Filed Nov. 29th, 1876. Jno. H. Freeman, clk., by S. D. Hays, D. C.

Bond.

Supreme Court of the United States.

STATE OF TENNESSEE AND SHELBY COUNTY
105 *vs.*
NAPOLEON HILL AND THE MEMPHIS CITY Fire and General Insurance Company.

Know all men by these presents, that we, Napoleon Hill and the Memphis City Fire and General Insurance Company and E. M. Apperson and ——— ———, as sureties, are held and firmly bound unto the State of Tennessee and the County of Shelby in the sum of one thousand dollars, to be paid to the said State of Tennessee and County of Shelby, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated
106 this 27th day of November, 1876.

Whereas, the above-named Napoleon Hill and the Memphis City Fire and General Insurance Company have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the Supreme Court of the State of Tennessee, at its September term, 1876, at Jackson: Now, therefore, the condition of this obligation is such, that if the above-bound and named Napoleon Hill and the Memphis City Fire and General Insurance shall prosecute their said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void,
107 otherwise to remain in full force and virtue.

NAPOLEON HILL. [SEAL.]
[SEAL.] MEMPHIS CITY FIRE AND GENERAL INSURANCE CO., [SEAL.]
By { E. M. APPERSON, *Presd't*, [SEAL.]
{ HENRY J. LYNN, *Cash'r.* [SEAL.]
E. M. APPERSON. [SEAL.]
G. V. RAMBAUT. [SEAL.]

I, H. E. Andrews, clerk, &c., do hereby certify that the above bond is good and the sureties sufficient for the penalty thereof.
Nov. 27, 1876.
[SEAL.]
H. E. ANDREWS,
Clerk U. S. Circ't Court, W. D. Tenn.

Approved 28 Nov., 1876.
JAS. W. DEADERICK, *C. J.*

(Endorsed:) Filed Nov'r 29th, 1876. Jno. H. Freeman, cl'k, by S. D. Hays, D. C.

108 *Citation.*

UNITED STATES OF AMERICA, } *ss.*
STATE OF TENNESSEE. }

To the State of Tennessee and the County of Shelby, in said state, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Tennessee, wherein Napoleon Hill and the Memphis City Fire and General Insurance Company are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

109 Witness the Honorable Jas. W. Deaderick, Chief Justice of the Supreme Court of the State of Tennessee, this, the 28th day of November, in the year of our Lord one thousand eight hundred and seventy-six.

JAS. W. DEADERICK.
C. J. Supreme Court of Tennessee.

Service of the within citation acknowledged.
Nov. 28th, 1876.

COUNTY OF SHELBY.
By JULIUS A. TAYLOR, *Atty.*
STATE OF TENNESSEE,
By J. B. HEISKELL, *Att. Genl.*

THE STATE OF TENNESSEE.

I, John H. Freeman, clerk of the Supreme Court of said State for the Western Division, at Jackson, do hereby certify that

110 the foregoing is a full, true, and perfect transcript of the record in the case of the State of Tennessee and the County of Shelby against Napoleon Hill and the Memphis City Fire and General Insurance Company, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office in the city of Jackson, this 15th day of January, A. D. 1877, and of the independence of the United States the 101st year.

[SEAL.] JNO. H. FREEMAN, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

111 The President of the United States to the Honorable the Judges of the Supreme Court of the State of Tennessee, greeting:

Because in the record and proceedings and also the rendition of the judgment of a plea which is in the said Supreme Court of Ten-

nessee, before you or some of you, being the highest court of law or equity of said state in which a decision could be had in the said suit between the State of Tennessee and the County of Shelby and Napoleon Hill and the Memphis City Fire and General Insurance Company, wherein was drawn in question the validity of a statute of the State of Tennessee, on the ground of its being repugnant to the Constitution or laws of the United States, and the decision was in *favr* of such its validity,

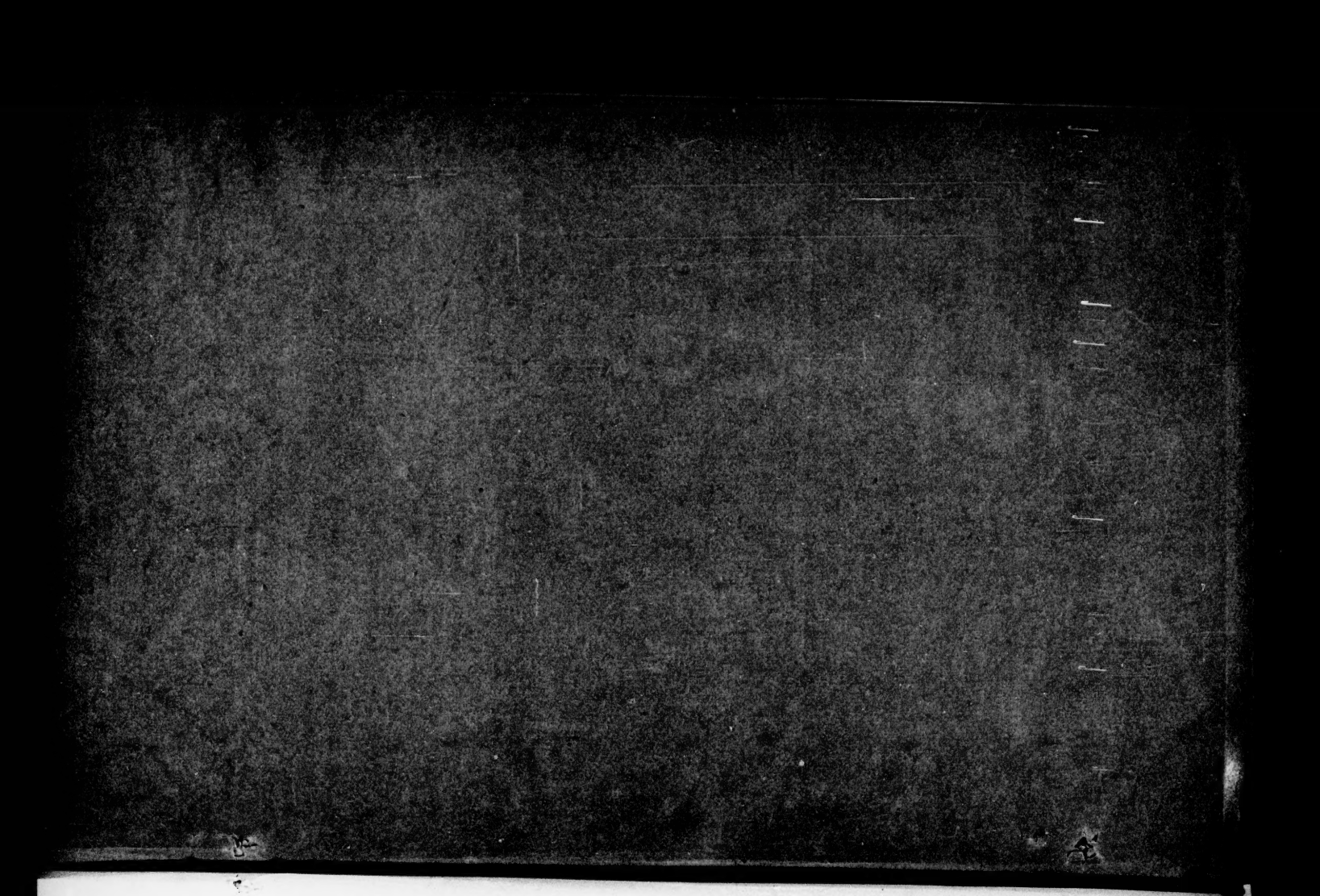
And wherein was drawn in question the *constuction* of
112 the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, a manifest error hath happened, to the great damage of the said Napoleon Hill and the said Memphis City Fire and General Insurance Company, as by their complaint appears. We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday of October next, in the said
113 Supreme Court, to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, the 27th day of November, in the year of our Lord one thousand eight hundred and seventy-six, and the one hundred and first year of American independence.

HORACE E. ANDREWS,
Clerk U. S. Circ't Court, W. D. Tenn.

(Endorsed:) The State of Tennessee and Shelby County vs. Napoleon Hill et al. Writ of error to Supreme Court of the State of Tenn. Filed Nov. 29, 1876. John H. Freeman, clk.

(Endorsed on cover:) Tennessee Sup. Court. No. 661. Napoleon Hill and The Memphis City Fire and General Insurance Company, plaintiff in error, vs. The State of Tennessee and the County of Shelby. Filed 6th March, 1877.



IN SUPREME COURT OF UNITED STATES.

DESOTO BANK, OF MEMPHIS,

PLAINTIFF IN ERROR,

VS.

STATE OF TENNESSEE,
COUNTY OF SHELBY, AND
CITY OF MEMPHIS,

} DEFENDANTS IN ERROR.

IN ERROR FROM THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF AND ARGUMENT OF HUMES & POSTON,

FOR PLAINTIFF IN ERROR.

Our brief is filed in vols 646 647 648 649 & 661

IN SUPREME COURT OF UNITED STATES.

DESOTO BANK, OF MEMPHIS,
Plaintiff in Error,
vs.
STATE OF TENNESSEE,
COUNTY OF SHELBY, and
CITY OF MEMPHIS,
Defendants in Error.

IN ERROR FROM THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF AND ARGUMENT OF HUMES & POSTON,

FOR PLAINTIFF IN ERROR.

This case involves a single question: Does the clause in the Charter of the DeSoto Bank exempt the individual shares of its stockholders from taxation other than that imposed by the Charter?

The DeSoto Bank was created by Charter granted by the General Assembly of the State of Tennessee, on March 20, 1860, ch. 147, Sections 1 to 6, inclusive. The last clause of Section 3 is in the following words: "Said Institution shall have a lien on the stock, for "debts due it by stockholders, before and in preference "to other creditors, *except the State, for taxes, and shall "pay to the State an annual tax of one-half of one per "cent. on each share of capital stock, which shall be in lieu "of all other taxes whatever.*"

The charter grants to the "*DeSoto Savings Institution*" all the usual powers of a banking institution, except that of issuing its own notes as a circulating me-

dium; and also limits the period of its existence to fifteen years.

The name was changed to that of "*DeSoto Bank.*" Acts of March 8, 1869, ch. 53, section 34. The period of its existence was extended ten years by the Act of March 21, 1873, ch. 45, sections 1 and 2.

The Legislature of the State of Tennessee, by a statute enacted February 25, 1870, ch. 81, section 1, subjected to taxation for all State, county and municipal purposes, among other classes of property, "*all "shares of stock in any bank, institution or company, now "or hereafter incorporated by, or in pursuance of any "law of this State, or any other State.*"

Under this statute the State of Tennessee, the county of Shelby, and the municipality of the city of Memphis, attempted in 187–, to collect taxes respectively on the shares of the stockholders in the DeSoto Bank.

The Chancery Court of Memphis decided in favor of the stockholders; the State, county and city appealed to the Supreme Court of the State. On final hearing the Supreme Court of the State decided that the exemption contained in the charter did not embrace the individual shares of the stockholders, but was confined to capital stock and property of the company. The sole ground of the opinion is that the charter contract was with the *corporation*, and *had reference alone to its property;* that the capital paid into and owned by the corporation is a distinct property from the shares of stock owned by the individual shareholders; and that the former alone was intended to be and was embraced in the contract of exemption.

This writ of error seeks a review by this Court of that decision.

The exempting clause, above quoted, first declares that the State shall have a paramount lien on the stock of each shareholder for taxes, and that said company shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes whatever.

This carefully worded exemption would be a nullity, and without any practical benefit, if construed as an exemption of the capital stock in the hands of the company, but, as leaving subject to taxation the shares of stock owned by the shareholder. As this Court says in the "Gordon Appeal Tax Case," in 3 Howard R., p. 147, "The aggregate could not be taxed without its "having the same effect upon the parts that a tax upon "the part would have upon the whole."

The Legislature, it seems to us, in this exempting clause, uses language clearly indicating an intention to exempt the shares in the hands of the shareholders. The one-half of one per cent. is called *an annual tax to be imposed on each share of capital stock.* The capital stock, whenever paid in, and as a fund belonging to the company, is not divided into shares. No intelligible purpose could be effected by using the words, "*on each share of capital stock,*" if it was intended to limit this contract to the company; but the purpose is perfectly intelligible, and according to the plain meaning of the words used, if we construe them as imposing an annual tax on the *shares as shares.*

In Gordon vs. Appeal Tax Court, 3 Howard, 339, the language of the exemption was that the faith of the State was pledged "not to impose any further tax "or burden upon them during the continuance of their "charters under this Act," and this Court held that a

tax upon a stockholder by reason of their stock was a violation of this contract, and the tax was illegal.

In section 4, of the charter of this bank, it was provided that *femme coverts and infants* might own shares of stock showing, conclusively that it was not contemplated that a tax should be destrained for against these parties individually, but that the tax once paid by the bank under section 3 of the charter should be in lieu of all other taxes whatever.

In Wilmington Railroad vs. Reid, 13 Wallace, 264, the exemption on the charter of the railroad company was, "*and the property of said company, and the shares* "*therein, shall be exempt from any public charge or tax* " whatsoever," and an effort was made by the State of North Carolina to tax the franchise and rolling stock. An injunction was sued out to enjoin the tax, and the Supreme Court of that State held the tax proper, and upon a review by this Court it was held that the franchises and rolling stock and lots of land appurtenant to and forming a part of the proporty used by the company in the transaction of its business, was exempted from the tax, and they reversed the decision of the North Carolina Supreme Court.

In Raleigh and Gaston Railroad Company vs. Reid, 13 Wallace, 269, in this case the property was exempted absolutely for fifteen years, and after this limitation had expired the Legislature was at liberty to tax the individual shares of the stockholders whenever their annual profits exceeded eight per cent., provided that the tax did not exceed twenty-five cents a share per annum, and the pleadings show that such a profit as eight per cent. had never been realized. Mr. Justice Davis, in delivering the opinion of the court, p. 270,

says: "The only way in which the property of this "company could be reached for taxation at all was "after the limitation of fifteen years had expired. The "Legislature was then at liberty to tax the individual "shares of stockholders whenever their annual profits "exceeded eight per cent. *When a statute limits a "thing to be done in a particular mode, it includes a nega-"tive of any other mode.* * * * As the "pleadings show that the annual profits of the shares "of stock have never reached eight per cent., it follows "that they were not subject to any public charge or "tax."

The judgment was therefore reversed. In our case the language is much stronger. The language is, that upon the payment of the one-half of one per cent. on each share, *it shall be in lieu of all other taxes whatever.*

In 54 New Hampshire R., 406, by section 33 of the charter of the Michigan Central Railroad Company, it was provided that the corporation after February 1, 1857, shall pay to the State an annual tax of three-quarters of one per cent. upon its capital stock paid in, including the two million dollars of purchase money paid to the State, and also upon all loans made to said company for the purposes of constructing its road, or purchasing, constructing, chartering or hiring steamboats, and the property and effects of said company, whether personal or mixed, shall, in consideration thereof, be exempt from all and any tax, charge, or exaction, by virtue of any law of this State now or hereafter to be in force, except penalties by this Act imposed.

Held to exempt the shares of stock from taxation in the hands of the stockholders.

Exemption of stock from taxation exempts the income and *all the property* in hands of the company or *shareholders.*

State vs. Hood, 15 Richardson, 177.

In this last case quoted a review of all the authorities is made, and to its reasoning the attention of this Court is earnestly invoked.

That a State may make such a contract with a corporation is now too well settled.

Cooley's Constitutional Limitations, pp. 280, 281; 7 Cranch, 164; 3 Howard, 13; 16 Howard, 369; and numerous other authorities there cited.

We again submit, that, as the annual tax of one-half of one per cent. is by the charter imposed on the shares of capital stock, and this shall be in lieu of all other taxes whatever, the construction must be, according to the plain import of the terms, that this shall be in lieu of all other taxes on the shares. The same clause gives the State a paramount lien on the shares of stock for taxes. This court held, in the Raleigh and Gaston Railroad Company, 13 Wallace R., 269, as follows: "Where a statute limits a thing to be done in "a particular mode, it includes a negative of any other "mode."

In our charter the language limits the tax on the shares to an annual tax of one-half of one per cent. on each share (according to the rule just quoted), this includes a negative of any other mode.

But our charter gives an express negative, saying: "This shall be in lieu of all taxes whatever." Here, then, we have not only the exclusion of any other mode of taxing the shares arising by implication from a particular mode of taxing such shares, but we have

an exclusion of all other modes of taxing fixed by express provision put in the strongest and most comprehensive terms, i. e., "this shall be in lieu of all other taxes whatever." And a lien is given on each share in favor of the State, paramount to all others, for the taxes due on that share.

This charter was granted after this Court, by the 3 Howard case of Gordon vs. Appeal Tax Court, and other cases, had fixed the interpretation of such clauses to embrace the shares of stockholders.

Again, we insist that the Legislature of Tennessee had never attempted, for the period of ten years, to tax the shares of stockholders in this and similarly situated companies. This long legislative construction is of controlling weight in establishing our view.

HUMES & POSTON,
Solicitors for DeSoto Bank of Memphis.

[See original charter and amendments hereto attached.]

CHARTER DESOTO BANK OF MEMPHIS.

ACTS OF 1859–60—CHAPTER 147, PAGE 470.

AN ACT to incorporate the DeSoto Savings Institute of Memphis.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That William Richardson Hunt, H. T. Lemmon, F. H. Clark, Jesse M. Tate, James Ross, and William Joyner, and their associates and successors, be, and they are hereby created a body politic and corporate by the name and style of the "DeSoto Savings Institute of Memphis, Tennessee," and by that name shall have succession, sue and be sued, plead

and be impleaded, and generally do every act and thing necessary to carry out the provisions of this Act, and promote the object and design of this corporation.

SEC. 2. *Be it further enacted*, That the capital stock of said company shall be divided into shares of fifty dollars each, and when two hundred shares shall have been subscribed, and one dollar per share paid thereon, the stockholders may meet and elect five Directors, who shall be elected and enter upon their duties, and said Directors shall elect one of their number to be President during their term of office.

SEC. 3. *Be it enacted*, That said President and Directors shall and may adopt and use a common seal, and alter the same at pleasure; may make and adopt proper and necessary by-laws for their government; may appoint all necessary officers and agents; fix their compensation, and take bond and security for the faithful discharge of their duties; they may prescribe the manner of paying in the stock, and of the transfer thereof; said institution shall have a lien on the stock for debts due it by the stockholders before and in preference to other creditors, except the State, for taxes, and shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock which shall be in lieu of all other taxes whatever.

SEC. 4. *Be it further enacted*, That said institution may discount notes, may buy and sell stocks, deal in exchange, and gold and silver bullion, may purchase and hold a lot of ground for the use of the institution as a place of business, and at pleasure sell and exchange the same, and may hold such real or personal property and estate, as may be conveyed to it, to secure debts due the institution, and may sell and convey the

same; it may receive on deposit any and all sums not less than one dollar per week, offered as stock deposits, and infants and *femmes covert*, may deposit therein and control the deposits so made, which shall be for their own separate use, free from other contracts or control whatever, and when such deposits shall amount to fifty dollars, it may, at the option of the depositor, become stock in the institution; it may receive and pay out other general or special deposits, and allow such interest thereon as may be agreed upon, not exceeding that allowed by law, and twice per year declare and pay to stockholders a dividend of profits, but said institution is hereby expressly prohibited from issuing notes, certificates or other paper for the purpose of being used, or which shall have a tendency to pass and be used as a circulating medium, but may sell its checks for moneys actually at its credits, at other points than its place of business.

* * * * * *

SEC. 6. *Be it further enacted*, That this Act shall be in force from and after the date of its passage, and shall remain in force fifteen years.

* * * * * *

W. C. WHITTHORNE,
Speaker of the House of Representatives.

TAZ. W. NEWMAN,
Speaker of the Senate.

Passed March 20, 1860.

IN THE SUPREME CO

OF THE

UNITED STATES.

TERM 1877.

NAPOLEON HILL, *Plaintiff in Error*

VS.

THE STATE OF TENNESSEE AND COUNTY OF SHELBY, *Defendants in Error.*

NO. 661

BRIEF OF MYERS & SNEED.

FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

TERM 1877.

NAPOLEON HILL, *Plaintiff in Error*

VS.

THE STATE OF TENNESSEE AND COUNTY OF SHELBY, *Defendants in Error.*

NO.

I. STATEMENT.

This cause is here upon writ of error to the Supreme Court of Tennessee, the highest Court of judicature in said State, and arises upon an agreed state of facts as shown by the record, and involves the power of the State of Tennessee and County of Shelby to tax certain shares of Stock belonging to the stockholders in said Insurance Company, under certain revenue laws of the State hereinafter referred to, which complainant in error claims impairs the obligation of the contract made by the State with the corporators and stockholders, when they accepted the charter, and is therefore in violation of Section 10 of Article I. of the Constitution of the United States.

On January 24th, 1870, the Legislature of the State of Tennessee granted the charter to the Memphis City Fire and General Insurance Company.

Acts 1869–70, p. 304, Sec. 11.

See agreed statement of facts, R. p. —.

The 17th Section of the Company's charter is as follows, to-wit:

"SEC. 17. *Be it further enacted*, That there shall "be levied a State tax of one-half of one per cent. "upon the amount of capital stock paid in, to be col- "lected in the same way and at the same time as "other taxes are by law collected, *which shall be in "lieu of all other taxes and assessments.*

"*Provided*, The said corporation shall file with "the Comptroller of the State, semi-annually in "the months of July and January of each year, a "synoptical statement of the business operations of "the Company, and the capital stock subscribed and "paid, under the oath of the Cashier."

Acts 1869–70, p. 306.

Agreed facts in this case, Record p. —.

It is agreed in this case that soon after the grant of said charter the capital stock was subscribed and the Company duly organized under its charter.

That the Company has ever since in all respects complied with the provisions of its charter; that it has made the semi-annual reports to the Comptroller of the State, and has duly and regularly paid to the State every year since its organization the said tax of *one-half* of one per cent. upon the amount of its capital stock actually paid in, as prescribed in said charter.

It is further "agreed that the Charter of the "Memphis City Fire and General Insurance Com-

"pany, and revenue and other laws, so far as appli-
"cable to the subject, shall be treated as part of this
"case and may be read on the trial, from any book
"or document, containing the same, as if they were
"copied herein."

It is also agreed, "that for the year 1872—under "*existing revenue laws*—the State has imposed a tax "of *forty* cents on each one hundred dollars, and "that the County of Shelby has levied a tax of "*one dollar* and twenty cents, on each one hundred "dollars of the valuation of said Shares of Stock."

This tax is in addition to the tax, or bonus, stipulated in the Charter, for the amount named in the Charter "is admitted to have been duly and regu-"larly paid to the State."

See agreed statement of facts, R. p.—

Afterwards, to-wit: on Feb. 25th, 1870, the Legislature passed a Revenue Law, and Section one, among other things, provides that "all Shares of "Stock in any Bank, Institution or Company, now "or hereafter, incorporated by or in pursuance of "any law of the State, or of any other State, and all "public Bonds or Stocks whatsoever, other than "Bonds of the United States, which by the laws of "the United States, are expressly exempted from "taxation; *all incomes* from Bonds and *Stocks* which "are *exempted* from taxation by the laws of the "United States, or the *State of Tennessee* * * * shall "be valued and assessed, and subject to taxation for "State and County purposes."

Section 2 fixes the rate of taxation for the State at 20 cents on the $100 of taxable property.

See Acts 1869–70, pp. 97–98.

By this Statute, the first revenue Act after the Charter, aforesaid, was granted, the Court will perceive,

that perhaps no tax was attempted to be levied upon Stocks exempt from taxation by Charter, but simply layed a tax on the income derived from such Stocks.

It will also be observed that this Act was passed by the 36th General Assembly of the State, and the last ever convened under the Constitution of 1834—the Charter of said Insurance Company having been granted January 24, 1870—under said Constitution of 1834.

The new Constitution went into effect May 5, 1870.

Thompson & Steger's Code, Vol. I, p. 122.

By an Act approved June 29, 1870, the Legislature of the State of Tennessee—the first held under the new Constitution, and which convened May 9, 1870, passed or enacted an Amendment to the Revenue Laws of the State—and the title of said Act is as follows:

"An Act to enforce Section 28 of Article II, and "Section 30 of Article II of the Constitution, and "to amend the Revenue Laws of the State, particu-"larly Section 5 of an Act passed March 1st, 1869, "'entitled an Act to amend the Revenue Laws of "the State,' and Section 1 of an Act passed Feb. "25, 1870, entitled 'An Act to sustain the credit of "the State, and to amend the Revenue Laws of the "State, and for other purposes.'"

The first, second and third sections of that Act were passed to enforce Section 28 of Article II of the *new* Constitution, as hereinafter quoted, and the first section, providing and designating what property shall be exempt, is almost a literal copy of the exemptions in said section and article of the Constitution, and taking the second section with it,

covers all the exemptions provided for in said new Constitution—no more and no less. The third section of said Act provides as follows:

SEC. 3. "That so much of Section 1 of an Act "passed Feb. 25, 1870, entitled 'An Act to sustain "the credit of the State, and to amend the Revenue "Laws of the State, and for other purposes,' as "exempts, &c., * * * *be and the same is hereby "repealed and the exemptions shall be as provided in this "Act."

Acts 1870, Ch. 35, pp. 66–67.

This Act of June 29th, 1870, expressly *withdrew* and repealed all exemptions contained in the said I. Section of the Act of February 25th, 1870, and by amendment substituted those exemptions alone contained in Section 28, Article II. of the new Constitution, and made Section 1 aforesaid entirely conform to the *new* constitutional requirements.

Then the I. Section of the Act of February 25th, 1870, as amended by Act of June 29th, 1870, so far as the subject matter of this suit is concerned, is as follows: * * * "Also all shares of Stock in any "Bank, Institution or Company, now or hereafter "incorporated, by or in pursuance of any law of this "State, or any other State, and all public Bonds or "Stocks, except United States Bonds, which by the "laws of the United States are expressly exempt "from taxation, *shall be valued, assessed*, and subject "to taxation, for State and County purposes."

Under which Statute as amended the shares of Stock of plaintiff in error were assessed for taxation, for the year 1872, for State and County purposes, which Statute and levy and assessment plaintiff in error claims impairs the obligation of the contract of exemption from taxation contained

in the Charter of the Memphis City Fire and General Insurance Company, and violates Section 10 of Article I. of the Constitution of the United States.

Record p. —.

The constitutional provisions of the State of Tennessee bearing upon the question in any way are as follows:

ART. I., SEC. 28., which provides "all lands liable "to taxation held by deed, grant or entry, town lots, "Bank Stocks, slaves between the ages of twelve and "fifty years, and such other property as the Legisla- "ture may from time to time deem expedient, shall "be *taxable*. All property shall be taxed according "to its value, that value to be ascertained in such "manner as the Legislature shall direct, so that the "same shall be equal and uniform throughout the "State; no one species of property from which a tax "may be collected shall be taxed higher than any "other species of property of equal value. But the "Legislature shall have power to tax merchants, "peddlers, and privileges in such manner as they "may from time to time direct."

And Art. XI., Sec. 7, as follows:

"The Legislature shall have no power to suspend "any general law for the benefit of any individual, "nor to pass any law for the benefit of individuals, "inconsistent with the general laws of the land; "nor to pass any law granting to any individual or "individuals, rights, privileges, immunities or ex- "emptions, other than such as may be, by the same "law, extended to any member of the community "who may be able to bring himself within the pro- "visions of such law; *Provided always, the Legisla- "ture shall have power to grant such Charters of incor*

"poration as they may deem expedient for the public "good."

II.

ERRORS ASSIGNED.

The plaintiff in error in this cause by his attorney says, that in the record and proceeding aforesaid, there is manifest error in this, to-wit:

1st. The Supreme Court of Tennessee erred in adjudging, and deciding by its final decree, in this cause, as follows: "That the claim made by defendant (here plaintiff in error) that the Revenue Act of the Legislature of the State of Tennessee of 1869–70, Feb. 25th, 1870, Ch. I, Sec. 1, as *amended* by Act of June 29th, 1870, providing that "all Shares of Stock in any Bank, Institution or Company, now or hereinafter incorporated, by or in pursuance of any law of the State, or of any other State, and all public Bonds or Stocks, except United States Bonds, which by the laws of the United States are expressly exempt from taxation, shall be valued and assessed and subject to taxation for State and County purposes." Under and by virtue of which Act, the defendants' (plaintiffs in error) Shares of Stock in the Memphis City Fire and General Insurance Company—were assessed for State and County taxes—impaired the obligation of the contract of exemption from taxation contained in the Charter of said corporation, and violated Section 10 of Art. I of the United States.

"This Court doth adjudge and decide this point and claim against the defendant, on the ground that the Shares of Stock in said Insurance Company, are not the property and thing exempted by the

Charter, but other and different, and are not within the protection of said Charter, and section of the Constititution of the United States."

2d. The said Court erred in adjudging that said Stock was subject to the tax in question, and in decreeing that the said tax "was properly assessed by the State of Tennessee and County of Shelby, for State and County taxes for the year 1872, upon the Shares of Stock mentioned," and in pronouncing judgment in favor of said State and County respectively, for the taxes assessed against plaintiff in error and his sureties.

And the plaintiff in error prays that the judgment aforesaid be reversed, and altogether held for naught, and that he may be restored to all things lost by said judgment.

III.

ARGUMENT AND BRIEF.

Did the Legislature of the State of Tennessee, under the Constitution as above, have the power to make the contract as contained in said Insurance Company's Charter? or in other words, have the power for the consideration therein named of one-half of one per cent. on the capital stock paid in, to commute the rate of taxation? or for the consideration above, have the power to commute the tax for the consideration received or supposed to be received?

A

It has been repeatedly decided by this Court, "That State Legislatures, *unless prohibited in*

"*terms by State Constitutions*, may contract by Legisla-
"tion to release the exercise of taxing a particular
"thing, Corporation or person, as that may appear
"in its act, and that the contrary is not open to in-
"quiry or argument in the Supreme Court of the
"United States."

Jefferson Branch Bank vs. Skelly I, Black, 448.

Now we contend that there is no prohibition in said Constitution against the Legislature contracting for a bonus or consideration to release the Corporation or Stockholders, from additional taxation. But on the contrary we say that: not only is there no prohibition in the Constitution, but on the contrary, express power is granted by the proviso to Art. II, Sec. 7 of the Constitution, which says:

"PROVIDED ALWAYS—The Legislature shall have "power to grant such charters of Incorporations, as "they may deem expedient for the public good."

We think that under the authorities, this settles the question as to the power of the Legislature to grant this charter, or any other.

If all sovereignty is inherent in the people, and as claimed, the power of commuting taxes is one of the powers of sovereignty; then in Tennessee we find it *expressly delegated by the people* to the Legislature, and not only is there *no prohibition*, but an express grant of power to create these Corporations, whenever the Legislature think the *public good* requires it. They are the sole judges of the expediency of the measure.

Again,

The Legislature having the unqualified and general power to create these Corporations, we say that it follows, that they *have full power* to determine the

terms and conditions of the grant. That an "*Unqualified grant of power in a Constitution* to a "Legislature, to grant charters of Incorporations, "carries with it the power to fix the conditions up- "on, and under which the Corporations shall exist "and act, one of which conditions may be, an *en-* "*largement* or *curtailment* of *the right to tax it*, as com- "paired with the objects of taxation."

The Bank vs. New Albany, 11; Ind. R., 140; Sedgewich on Cons. Law, pp. 631, 632.

But it is urged that this Charter violates Art. II., Sec. 28 of the Constitution of the State of Tennessee, which provides for "equality and uniformity of taxation," in answer to which we say, that the Constitution does not provide that all property shall be taxed.

Art. II., Sec. 28, simply provides that all Bank Stocks, etc., shall *be taxable;* this is not a mandate to tax absolutely, but according to all the legicographer's means *may be* taxed, provided the Legislature deems it expedient to do so. It rests in the discretion of the Leglature; the language is not mandatory in the Constitution but pern issive.

This *one*-half of one per cent. is not a property tax, as contemplated by the 28th Sec. of Art. II. of the Constitution; it is in every essential different from a property tax.

Provident Ins. Co. *vs.* Mass., 6 Wal., p. 638, opin. Society for Saving *vs.* Coite, 6 Wal., p. 606, opin.

Again the question of equality, uniformity and apportionment, has nothing to do with this question. This is solely a question to exempt the franchise and shares of Stock for a consideration.

Mr. Cooley says, property is sometimes released from taxation by contract with the State and corporations, and specified occupations are sometimes charged with specific taxes, in lieu of all taxation of their property, and that there is still ample room for apportionment after all such exemptions have been made.

Cooley Cons. Lim., p. 515, and note.

This is what we claim in this case. The Legislature has by contract sold the franchise, or taxed the privilege of Insurance, at a specified sum, and in *consideration* of said amount paid by said Corporation, and on the ground of public policy, has agreed to EXEMPT the property of said Corporation and its Stock from *all* taxation.

Hence we say, the power of taxation is not involved here at all; it is simply the power to *exempt* from taxation for a consideration or bonus.

It has been determined by this Court that the question of *exemption* from taxation is one of *policy*, and not of power.

State Bank *vs.* Knoop, 16 How., 384.

This is what we claim in this case. The Legislature has, by *contract*, sold the franchise or taxed the *privilege* of insurance at a specific sum, and in lieu or *consideration* of said amount paid by the Corporation and on the ground of *public policy* has agreed to *exempt* the *Stock* of said Corporation and its property from *all* taxation.

"The constitutional requirements of *equality* and *uniformity* only extends to such *objects* of taxation as the Legislature shall *determine* to be properly subject to the burden. The power to determine

the persons and objects to be taxed is trusted exclusively to the Legislative department."

Cooley, Cons. Lim. Page 515.

The Legislature has the power, under the Constitution, to select the objects of taxation, and upon the exercise of this power there is no constitutional restriction. It is within the discretion of the Legislature to *exempt* any particular property from taxation.

State vs. Crittendon Co. 19 Ark. R. 370–371. Op. This was under a constitution *identical* with ours on the question of "equality and uniformity."

The words "shall be taxable" in the Constitution plainly means *may be taxed*, that is the Legislature may tax such property if in its discretion it sees proper to do so, but that clause is not *mandatory*. Nor does an *exemption* from taxation by the Legislature interfere with or violate the rule of uniformity.

Mr. Cooley says: "The rule of uniformity requires an apportionment among all the subjects of taxation within the districts. *But it does not require that everything* which the Legislature *might make taxable shall be made so in fact. Many exemptions* are usually made from taxation, from reasons the cogency of which is at once apparent.

Cooley Cons. Lim. Page 514.

But again: As *conclusive* of the *power* of the Legislature of Tennessee to *make* the *contracts* and *exemptions* claimed under the Constitution of 1834.

We insist, the power of the Legislature under that Constitution, to grant the exemptions and make the contracts contained in our charters has been settled by cotemporaneous legislative construction of that instrument, and, by legislative and judicial

construction and acquiesence, running through a period of 36 years, and the power of the Legislature to make such contracts has not been doubted or questioned by the Legislature, bench or bar of Tennessee, during that period; but on the contrary repeatedly recognized, as will be hereinafter shown—to-wit.

The Legislature of 1835–6, the first that met after the adoption of the Constitution of 1834—and which was composed of many of the gentlemen who composed the Constitutional Convention of 1834, for instance, Jonathan Webster, Terry H. Cahal, W. G. Childress, William Ledbetter, J. C. N. Roberson, Boling Gordon and John McGaughey, were members of the Senate, and composed one-third in number of that body; and also members of the Convention; also, West H. Humphreys was a member of the Convention and also of the House.

It is a part of the history of our State that all, or most of these gentlemen, were eminent lawyers; and in launching the Constitution of 1834, these gentlemen were assisted by many of the ablest lawyers of Tennessee of that day—and among them Hon. A. O. P. Nicholson, Robert C. Caruthers, Charles Ready, Ephraim H. Foster, and many others who were members of the same Legislature.

This Legislature, on February 5th, 1835, passed a general revenue law; and declaring what property should be taxed under said Constitution.

Section 1st of said Act provides that "all lands in this State held by deed, grant, entry or dower, and town lots other than such as are exempted from taxation as hereinafter provided, all pleasure carriages and bank stock, other than such as may be

exempted from taxation as hereinafter provided, shall be subject to the payment of an annual tax," etc.

Section 2d provides that "all lands within this State now held or which may hereafter be held by any person or persons, for the use of any religious society for the purpose of having thereon a church, meeting-house, or other building for public worship; also, lands which have heretofore been or may hereafter be appropriated for the use of schools, or which may be held by any person or persons in trust for the use of any college, academy or other seminary of education in this State; all court-houses, jails, poor-houses, alms-houses, together with the real and personal property belonging thereto; all public streets, alleys, and public walks in the towns of the State; all grave-yards, public roads of all classes; all stocks owned by the State, all capital stock or property of all such incorporated companies as have heretofore been, or may hereafter be exempted from taxation in their respective charters of incorporations, and carryalls shall be and the same are hereby exempted from the payment of any State, County or other tax."

Acts 1835, pp. 58–9.

We think this a clear declaration and recognition of the power of that and future Legislatures, to grant *exemptions* of the capital stock and property of associations or individuals from taxation.

This same Legislature (Dec., 1835,) chartered the Memphis and Lagrange Railroad Company, in which the entire capital stock and property of said Company was *exempted* from taxation for twenty years.

Again, the General Assembly of 1837-8, the sec-

ond after the adoption of this Constitution and composed also of some of the members of the Constitutional Convention, to-wit:—Cahal, Armstrong, Ledbetter and Douglass—chartered the Western Railroad Bank on Dec. 5, 1837, and the 25th Section of that charter provides that the capital of said bank, and all the funds thereof, the shares of the Stockholders therein and dividends thereon shall be free and exempt from taxation of every kind, until the Road shall be completed and the Stockholders shall have a dividend of six per cent.

Acts 1837–8, Ch. 6, Sec. 25, p. 24.

October 30, 1837, the Lookout Railroad Company was chartered by the Legislature, and the 19th Section of its charter provides that the capital stock of said Railroad shall be forever exempt from taxation, and all their other property of every kind and description, including their road and rails, shall be exempt for twenty years.

Acts 1837–8, Ch. 17, Sec. 19, p. 48.

Again, Dec. 2, 1837, the same Legislature chartered the Lebanon and Sparta Turnpike Company. In the 6th Section of which it is declared that the property of said road, when completed, *shall vest in said Company, and be free from taxation.*

Charter of Lebanon and Nashville Turnpike Company—chartered February 12, 1836—contains similar exemptions.

Also Knoxville and Cumberland Turnpike Company.

Sec. 6, Acts 1837–8, Ch. 174, p. 243.

Also Knoxville and Kingston Turnpike Company.

So too Knoxville and Athens Turnpike Company.

So too Jonesboro, Powers Valley and Knoxville Turnpike Company, all of same date.

See also 8th Section of the Charter of the Ashport Turnpike Company, December 11, 1837, p. 323, *exempt* from taxation.

12th Section of Charter of Jackson and Purdy Turnpike, passed January 22, 1838, *exempt from taxation.*

Page 376, Acts 1837–8.

Authorizes the Union Bank to establish two other branches at such places as they may see proper, to be governed by original Charter of said Union Bank.

Chapter 123, Sec. 2, p. 189.

And many others.

THE 23d GENERAL ASSEMBLY.

Composed also of several of the members of the Constitutional Convention.

Acts of 1839 and 1840.

Passed the following Acts, incorporating companies and extending charters with exemptions from taxation.

An act to amend Charter of the Memphis and Lagrange R. R. Co., empowering them to construct a branch Road, declaring that all land thereafter purchased, and then owned by said Road over and above that necessary for the Road and Depots, as prescribed by original charter, should be taxed, *balance of its property exempt.*

Chapter 101, Sec. 2, p. 190.

Nashville and White Creek T. P. Co.

Ch. 116, Sec. 2, p. 285.

Whinchester and Jasper T. P. Co.
Ch. 159, Sec. 2, p. 252.

In these companies all their *property exempt.*

24th ASSEMBLY, 1841–2.

Also containing many of the members of the Convention, among them Burchett Douglass, Speaker of the House, passed Acts chartering corporations with exemptions, among them—

December 30, 1841, An Act to extend the Charter of the Memphis and Lagrange R. R. Company for two years.
Ch. 28, Sec. 1, p. 25.

25th ASSEMBLY, 1843–4.

Composed of several members of the Convention, and also Hon. A. O. P. Nicholson, passed several Acts *exempting the capital* and *property* of persons and corporations, some among them as follows:

An Act to amend the Union Bank Charter of 1832.
Ch. 132, Secs. 1, 2, 3, p. 164.

Memphis Ins. Co., chartered, Ch. 221, Sec. 18, p. 260, provides for bonus of one-half of one per cent.

26th GENERAL ASSEMBLY, 1845–6.

Also composed of some of the members of the Convention, and many eminent lawyers, among whom was Hon. John L. T. Sneed, passed several Acts, *exempting* corporations and individuals from taxation in their Charters.

Among others, as follows:

January 28, '46—Memphis and Louisville T. P. Co.

Ch. 164, Sec. 2.

January 4, '44—Bank of East Tennessee. chartered, Ch. 60, Sec. 18, p. 72. *Bonus* of one-fourth per cent. on amount of capital stock paid in.

December 11, '45—Nashville and Chattanooga R. R. Co., Ch. 1, Sec. 38, p. 26, *exempts the capital stock* forever, and outside property of Road for twenty years.

December 12, '45—Bledsoe Creek T. P. Co.
Ch. 33, Sec. 1, p. 82.

January 15, '46—Memphis and Clarksville Female Academy.

Ch. 58, Sec. 8, p. 117, *exempts* all its property of every kind.

January 30, '46—Mississippi R. R. Co.
Ch. 133, Sec. 2, p. 210. *capital stock exempt.*

January 31, '46—Cumberland Navigation Co.
Ch. 159, Sec. 19, p. 244, provides for annual payment of ten per cent. on dividends, over and above six per cent. on amount of capital stock paid in.

February 2, '46—Memphis and Charleston R. R. Co.

Ch. 18, Sec. 37, p. 275, *exempts* capital stock and property from taxation.

27th GENERAL ASSEMBLY, 1847-8.

Made many *exemptions;* and among them the following, to-wit:

January 28, '48—Nashville and Sparta R. R. Co.
Ch. 187, Sec. 35, p. 310.

January 28, '48—Mobile and Ohio R. R. Co.
Ch. 178, Sec. 48, p. 187.

January 27, '48—East Tennessee and Virginia R. R. Co.
Ch. 120, Sec. 30, p. 195.

February 4, '48—Memphis and Charleston R. R. Co., p. 247, charter renewed and extended on same basis as original; also Memphis Lagrange, charter and time extended.

January 28, '48—*Duck* River Navigation Co., Ch. 201, Sec. 6—Bonus of $2000.

All the above and several others, *exemptions* were made in the Charters from taxation, and in some, bonus paid.

28th ASSEMBLY, 1849-50.

Made *exemptions* in the following cases—Charters:
February 9, '50—Nashville and Louisville R. R. Co.
Ch. 76, Sec. 40, p. 250.

February 13, '50—Louisville and Nashville R. R. Co.
Ch. 260, Sec. 25, p. 505.

February 9, '50—Nashville and Columbia R. R. Co.
Sec. 1, p. 197.

February 8, '50—An Act granting power to the Union Bank to establish a Branch at Chattanooga, subject to be governed by original Charter; Ch. 226, Sec. 1, p. 440.

29th ASSEMBLY, 1851-2.

Granted the following Charters, containing a

clause of *exemption* from taxation of their property, to-wit:

Nashville & Northwestern R. R. Co.
Ch. 74, Sec. 36, p. 91.

Tenn. & Ala. R. R. Co.
Ch. 74, sec. 1, p 93.

Memphis, Clarksville & Louisville R. R. Co.

Besides several others not necessary to name.

30th ASSEMBLY, 1853-54.

Granted the following Corporations, exemptions in their Charters, to-wit:

Miss. Central & Tennessee R. R. Co.
Ch. 1, sec. 13, p. 1.

Cincinnati, Charleston & C. Gap R. R. Co.
Ch. 301; sec. 8, p. 645.

And others.

31st ASSEMBLY, 1855-6.

Chartered several companies, and granted exemptions from taxation in their Charters, as follows:

Strawberry Plians, D. & N. R. R. Co.
Ch. 121, sec. 1, p. 497.

Duck River Valley, R. R. Co.
Ch. 244, sec. 1, p. 497.

And others.

32nd ASSEMBLY, 1857-8.

Composed of some members of the Convention and many able lawyers, among them Hon. Jno. C. Birch and J. B. Heiskill, granted several Charters

to Corporations containing exemptions from and commutation of taxes, to-wit:

Bluff City Ins. Co.—Ch. 166, sec 10.
Hernando Ins. Co.—Ch. 165, sec. 11.
DeSoto Ins. & Trust Co.—Ch. 166, sec. 12.
Clarkesville Ins. Co.—Ch. 166, sec. 15.
} p 393 to 397

In each of above Charters it is provided that they shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock subscribed, which shall be in *lieu* of all *other taxes.*

33rd ASSEMBLY, 1859–'60.

Energetic Ins. Co., of Nashville chartered—ch. 215, sec. 60, p. 644—provides for ½ of 1 per cent. in lieu of all other taxes.

National Ins. Co., of Brownsville—ch. 215, sec. 61, p. 644—same as last above.

Memphis, Holly Springs, Mobile R. R. Co.—ch. 212, sec. 19, p. 606—exempts *capital stock* and all property from taxation until completed. Also several others at the same session.

34th GENERAL ASSEMBLY, 1866–7.

Washington Ins. Co., chartered—ch. 71, sec. 1, p. 227—provides ½ of 1 per cent., in *lieu* of all other taxes—and others.

35th ASSEMBLY, 1867-8.

McMinnville and Bersheba Springs T. P. Co., chartered—ch. 76, sec. 18, exempts from taxation all its property.

Bristol and Kendrick Creek T. P. Co.—ch. 76, sec. 8, p. 152—*exempt from taxation of every kind.*

Knoxville & Ky. R. R.—ch. 81, sec. 22, p. 171. Same as East Tenn. and Virginia exempt.

Lebanon & Gallatin R. R. Co.—ch. 35, sec. 11, p. 59. Exempt all its property of every description for ten years.

Also several others.

36th ASSEMBLY, 1869–'70.

An Act to revive and continue the Bluff City Ins. Co.'s charter, granted—March 20, 1858, ch. 37, sec. 4, p. 278—$\frac{1}{2}$ of 1 per cent. in lieu of all other taxes.

Memphis City Fire Ins. Co., chartered—ch. 47, sec. 17, provide for $\frac{1}{2}$ of 1 per cent. to be paid to the State in lieu of all other taxes.

Lebanon, Statesville T. P. Co., chartered—ch. 67, sec. 19, exempts all its property of every kind.

Masonic Male and Female Institute of Glascow—ch. 64, sec. 31, p. 444, exempts all the property now possessed or hereafter to be acquired, from taxation.

This power of the Legislature has been exercised and acquiesced in for many years. Even before the adoption of the Constitution of 1834. Many charters having been granted under the Constitution of 1796, containing clauses of exemption and commutation.

This construction which the Legislature of 1835—the first that met—after its adoption, composed as we have shown, of many members of the Convention, which framed the Constitution of 1834,

(and who had the best opportunity to know its meaning) and which has been recognized by every succeeding Legislature of Tennessee, from that time to 1870, a period of over thirty-five years, each in its turn, making these charter contracts and recognizing the rule of exemptions established by the Legislature of 1835, modifying them from time to time and making other *exemptions* as in their judgment the public good required; adding to this that, the power of the Legislature to make these contracts and *exemptions* under the Constitution of 1834 has never been doubted, or questioned by any of the branches of State Government, during this long period, but also recognized and sanctioned by the judiciary of the State, ought to be entitled to great weight in determining the construction of the instrument, and what its framers meant by this clause of equality and uniformity, and power to exempt from taxation, all this we think ought to cause a Court to pause, before they declare the many contracts entered into by the Legislature under that Constitution void.

The Legislature is a co-ordinate department of the Government; and the construction which it has put upon this Constitution, ever since its adoption, should have great weight, and particularly so when we understand that millions of property has been invested under these contracts, in response to the offer and inducements held out by the Legislature.

Cooley Cons. Lim. p. 67 and 68.

State of Arkansas vs. Crittenden Co., 19 Ark. p. 370-1.

Martin vs. Hunten, 1 Wheaton, p. 350.

Briscoe vs. Canwealth, 11 Peters, p. 318, 6 Wheaten 418, 12 Wheaton 290, 10 Wheaton 63, 1 Cranch 299.

This power of the Legislature to contract and exempt property from taxation under the Constitution of 1834 for a consideration received, or supposed to be received, or even without any consideration, has never been questioned by the judiciary of Tennessee from 1834 to 1873; but repeatedly recognized.

Union Bank vs. State, 9 Yerg. p. 492.

McCallie vs. Mayor and Aldermen of Chattanooga, 3 Head. p. 318.

State vs. Armstrong, 3 Sneed, p. 624.

Woolfork vs. Union Bank, 3 Cold, p. 498 and 499.

McLaughlin vs. Caldwell, 2 Southern Law Review, page 362-3, decided at December Term, 1871, at Nashville.

Hernando Ins. Co., vs. City of Memphis, decided at Jackson, Tenn., 1872.

We confidently insist that this cotemporaneous and practicable construction of this portion of the Constitution by every department of the State, and that too by officers, sworn to discharge their duty, and who were the framers of said Constitution, and had better opportunity than any others to know what it meant, should not only have great weight, but be conclusive of the construction given.

Mr. Cooley says, that where there has been a practical construction, which has been acquiesced in for a considerable period, considerations in favor of adhering to this construction, sometimes present themselves to the Courts, with a plausibility and force which it is not easy to resist. Indeed, where a particular construction has been generally accepted as correct, and especially where this has occurred contemporaneously with the adoption of the Constitution, and by those who had an opportunity to un-

derstand the intention of the instrument. It is not to be denied that a strong presumption exists, that the construction rightly interprets the intention, especially when this has been given by officers in the discharge of their duty, and rights have accrued in reliance upon it, which would be divested by a decision, that the construction is erroneous. The argument of *ab inconvenienti* is sometimes allowed to have very great weight.

Cooley, p. 67.

Again, in the case of Priggs vs. Commonwealth of Pennsylvania, in discussing this question of contemporary and practical construction, and long acquiescence by the departments of Government, the Supreme Court of the United States says: This very *acquiescence*, under such circumstances of the highest State functionaries, *is a most conclusive proo* of the universality of the opinion, that the act is founded in a *just construction of the Constitution, independent of the vast influence which it ought to have as a contemporaneous expositions of the provisions, by those who were its immediate framers, or intimately connected with its adoption.*

16 Peters R., p. 620 of opinions.

Mr. Justice Story in Hunter vs. Martin upon the same question says: This weight of contemporaneous construction by all parties, this acquiescence by enlightened State Courts, * * * *does as we think, place the doctrine upon a foundation of authority which cannot be shaken*, without delivering over the subject to perpetual and irremediable doubts."

1 Wheaton R., p. 350.

In Cohen vs. Virginia, Chief Justice Marshall holds the same doctrine on this point, and says that

But the Supreme Court of Tennessee, in this case and others of the same class on trial together, made no question as to the power of the Legislature to make this Charter contract.

See opinion.

And since this Brief was prepared we have been informed that adversory Counsel concede the power of the Legislature to make the contract, and for the consideration named, exempt the Franchise and Capital Stock from all other taxation.

IV.

Now assuming that the Legislature had the power for the consideration named in the charter to make the contract, the last question remains, to-wit:

What is the proper construction of this contract embraced in the 17th section of the charter? to-wit:

"*Be it further enacted*, That there shall be levied "a State tax, *of one-half of one per cent. upon the* "*amount of capital stock actually paid in*, to be collect- "ed in the same way and at the same time as other "taxes are by law collected, *which shall be in lieu of all* "*other taxes and assessments.*"

The last opinion of the Supreme Court of Tennessee in this case and others heard together, by a divided Court, *three* to *two*, adjudges that the *franchise* and capital stock of the corporation are alone exempt from further taxation, by reason of the provisions of the charter contract; and that the shares of Stock owned by plaintiff in error, are not exempt, and hence taxable under the Revenue Act of 1870 as amended.

This Court will perceive that the Supreme Court

of Tennessee has delivered two opinions in these cases *differing widely from each other.*

See certified copy of first opinion.

A brief history of this case, and others heard with it, will not be amiss just here. It is this: After the first opinion was delivered, a rehearing was granted in all the cases, and these cases resubmitted; and were held, under advertisement by the Court, for over two years, with an *equally divided Court.* And thus matters stood until Cheif-Justice Nicholson died, leaving but *five* Judges; after which the present opinion was delivered, the majority opinion by J. Freeman, and the dissenting opinion by J. McFarland, both of which are embodied in the Record.

Now, we insist that the construction placed upon this contract of exemption by the *majority* opinion in this case is a *constrained one* and *erroneous,* and not sustained by sound reason or authority, and that the *minority* opinion gives the proper construction to these contracts, and is throughout sustained by principle and an *overwhelming weight of authority.*

Now, in order to more fully comprehend and understand what was intended to be *exempted* from all other taxation, by the contracting parties at the time; when, to the contract they superadded the words, "*which shall be in lieu of all other taxes and assessments,*" we will briefly refer to the settled Law of Tennessee, as it had stood for years.

The 11th Section of the Union Bank Charter is as follows:

"SEC. 11. *That in consideration of the privileges "granted by this Charter, the Bank agrees to pay to the "State annually, one-half of one per cent. on the amount "of Capital Stock paid in by the Stockholders, other "than the State.*"

It will be seen that this charter did not have the additional clause, "*which shall be in lieu of all other taxes and assessments.*"

This charter was passed in 1832. In 1835 the State of Tennessee and county of Davidson attempted to lay an additional tax on the *capital* stock or properties of the Corporation, which attempt was resisted by Bank.

And at the December Term, 1836, the Supreme Court of Tennessee decided the case, in which the Court held—

1st. That the charter of the Union Bank was a *contract* between the State and the corporators, which was protected from infraction by any subsequent Act, and fully protected by Art. 10 of Sec. 1, of the Constitution of the United States.

2d. *That* the *franchise and capital stock and property of the Bank* was *protected from any additional tax or burden, than the "one-half of one per cent. on the capital stock* paid in.

9 Yerg. p. 496, 497.

And the Court, on page 497, says, "This shows "that the tax consideration or bonus, or by what-"ever other name it may be called, of half of one "per cent. was for and in consideration of the use "of the capital, as provided for in the Charter, and "not for a naked right, an ideal nonenity, which we "apprehend no one ever thought of purchasing. "Then if the Bank, in consideration of the payment "annually of *one-half* of *one per cent.* on its capital stock, "has *purchased* from the State the privilege of employ-"ing in its banking operations its capital, *does a law "which imposes in addition thereto, an annual tax on the "same capital thus employed, impair the obligation of the "contract? Most unquestionably it does.*"

3d. The Court as a mere *dictum* seemed to hold that: the Shares of Stock in said Bank might be taxed as against the Stockholders. That *they* were not included in the exemption, under the language of *that Charter Contract*; but it will be seen that this last question was not in any way before the Court; but suppose it had been, that charter as shown, did not contain the additional clause—"*which shall be in lieu of all other taxes and assessments.*

Union Bank vs. State, 9 Yerg. R. 490, 496, 497, 501.

Again,

For sake of argument we can assume and will assume on this point, that the opinion of the Supreme Court on the last proposition, to-wit: that *under a Charter like that of the Union Bank*, the Shares of Stock as against the Stockholders, *is not protected* from further taxation, by reason of the simple bonus paid.

Then we have a settled adjudication of the Supreme Court of the State unquestioned for thirty-four years. *That certain language* in a Statute means a particular thing, to-wit—these words: "That in "consideration of the privileges granted by the "charter, the Bank agrees to pay annuallly the one-"half of one per cent. on the amount of the capital "stock paid in by the Stockholders, other than the "State," in a charter of incorporation, of themselves without more—as a matter of construction *absolutely exempts the franchise and the capital stock and property of the Corporation* from any other or further taxation of any kind.

2d. That the above language, in the Charter Act *alone does not exempt the Shares of Stock in the hands of* the Stockholders.

Now, we state here a proposition of universal application, as we understand it, to-wit: "*That words "in Statutes which have received Judicial* construction, "shall in subsequent *Statutes be construed in that "sense.*"

Now the Union Bank Law had settled the construction simply of a charter, providing that a bonus should be paid to the State, and the case of Gordon vs. Appeal Tax Court, had settled the construction of a charter with the superadded words, "*in lieu of all other taxes and burdens.*"

Hence, it is fair to assume that the Legislature and corporators used and understood the exemption clause in the Memphis City Fire and General Insurance Co., in the *sense of the previous* Judicial construction, to-wit:

That a charter only providing for the payment of "*one-half of one per cent. on the amount of the capital stock paid in,*" only exempted the franchise and capital stock or property of the Company from further taxation, but left the Stockholders to be taxed on account of the Shares of Stock held by them, but that the superadded words, "*which shall be in lieu of all other taxes and assessments,*" exempted the Shareholders also from any other tax on their Shares."

Again, then, we ask—

What were the parties contracting about when they added the outside additional clause of, "*which shall be in lieu of all other taxes and assessments?*" What did they mean that this contract should exempt?

Surely not simply to provide against any further tax on the franchise and capital stock of the corporation, *because* that object would have been effectually

accomplished by the clause, "*In* consideration of "which the Company agrees to pay to the State an- "nually one half of one per cent. on amount of the "capital stock paid in," and nothing more, under the 9th Yerger case, and settled law of the State. Under this last clause alone, no further tax could ever have been imposed on the *franchise* or capital of the Company.

And under the clause in the Union Bank case, 9 Yerger, no other *like* tax could be imposed.

Then we contend that this additional clause, "*which shall be in lieu of all other taxes and assessments,*" must have been intended to have some additional meaning. It cannot be presumed that this additional clause was simply put there for grandeur. It must mean something. Then the query is, what does it mean by "being in lieu of all other taxes and assessments?" It cannot mean any other like taxes and assessments, because, *the contract was complete and excluded, as we have shown, all like taxes and assessments on the franchise and capital without these superadded words.*

Then there was *no other subject* to be *exempted*, or for this additional clause to be operative upon *except the Shares of Stock* in the hands of the Stockholders. And we must assume that this was the intention by the words employed in this Company's charter.

The error of the majority opinion of the Supreme Court is that it has violated all rules of construction, and given *no force or effect* to the superadded words in the charter, "*which shall be in lieu of all other taxes and assessments,*" but have ignored this clause entirely.

We maintain that, as a universal proposition of

law, the rule is that "that in putting a construction "upon *any* Statute, *every* part shall be regarded; and "it shall *be so expounded if practicable to give some effect* "*to every part of it.*

"*Effect if possible* must be given to every clause."

"*The same rule* is to be applied to a sentenance, "and some meaning *if possible* must be given to "every word in it."

Sedgewich on Construction of Statutes and Constitutional Law, 2 Ed. p. 200, 201—Note and authorities.

People vs Burns, 5 Mich. R. 114.

"And where a given construction would make a word 'redundant,' that is reason for its rejection."

Dearborne vs. Brookline, 97 Mass. 466.

Gotes vs. Sallmon 35, Cal. R. 576.

"Words in a Statute are never to be construed as "unmeaning, and surplusage if a construction can be "legitimately found, which give force to and preserve "all the words in the Act."

Potter & Dworris on Statutes, p. 179—Note.

13 Iowa, 310.

29 Conn. R. 210.

Again,

The Legislative language as above shown, to-wit: "In consideration of which the company shall "pay to the State a tax of one-half of one per cent. "upon the amount of capital stock paid in," had received a settled construction, to-wit: that it *exempted* the franchise and capital stock of the Corporation, *but not* the Shares of Stock.

"When a subsequent Legislature comes to pass a "subsequent Statute upon the same subject of the "prior Statute, *and uses different* language, it is an

"intimation *that a different construction is intended.*"
Sedgewich Stat. Law, p. 212.—Note (a).

In Rich vs. Keyser 54, Pa. St. R. 86, the principle is also announced as follows:

"The Act of 1863 differs from that of 1772. The "Legislature of 1863 must be presumed to have "known what the language of the Act of 1772 was "and what Judicial construction had been placed "upon it. Then knowing this, and yet not follow- "ing it, but substituting for it different language, "did they not intend that we should construe ac- "cording to its ordinary import. I see no other "ground for Judicial construction to rest upon; in- "deed the words of a Statute when ambiguous, are "the true guide to the Legislative will. That they "differ from the words of a former Statute on the "same subject, is an intimation that they are to "have a different construction.

"Whatever we may think of the reason that in- "duced the Legislature to change its mind, it is "enough for us that they induced a change in the "Legislative language that requires a change of "Judicial construction."

Rich vs. Keyser, 54 Penn. St. p. 86–89.

Again: We ask what the parties meant by the language used in the charter, by which the Corporators agreed to pay annually to the State *one*-half of one per cent. on the amount of the capital stock paid in, "*which shall be in lieu of all other taxes and assessments?*" Certainly the Corporators and Stockholders, *when they subscribed for Stock* in this Corporation and *accepted the Charter*, agreeing to pay this bonus to the State during the existence of the charter, annually, did not understand that they were to be taxed on the *value* of their *Shares of Stock;* be-

cause, no *refinement* or play upon words, can demonstrate that the entire Shares of Stock do not, as a matter of fact, represent *the entire value of the capital stock and property of the Company, no more and no less.* The shares of Stock are valuable just in proportion as the capital of the Corporation increases or diminishes. Can it be thought that a body of sane men would pay so large a consideration and bonus for an *exemption of their property, in the aggregate*, and intend to permit a tax upon the parts *which in fact would be equal to a tax upon the whole?*

If such were the case or intention, we ask what would be the benefits derived from the payment of this consideration? The answer is plain—nothing; on the contrary, a great disadvantage, because they would pay by the contract one-half of one per cent. more than corporations who had no contract—and frequently more than this, because the agreement here is to pay one-half of one per cent. on the amount of capital stock *paid* in. Now, suppose the whole capital stock were paid, then, under this charter the one-half of one per cent. would have to be paid annually to the State, *even if by disaster the capital of the Company* had been reduced to *five* cents in the dollar, and actual value of the stock only worth that much—and under the general law the shares of stock would only be taxable at five cents in the dollar on the face value. We earnestly contend that no such intention can be imputed to either party to this contract.

Again: Whilst for certain purposes there may be an artificial distinction between the capital or capital stock of a corporation and the shares of stock held by the stockholders, *yet we say that in reality it is a distinction without any real difference.*

While corporations are in the use and enjoyment of their franchises the *entire beneficial interest of its funds and assets belong to the stockholders*, and the Courts will, in the language of *Chief-Justice Marshall*, look through the technical definition of a corporation as a mere legal existence, "*and con-*
"*template it more substantially in the persons whose inter-*
"*est it represents.*"

Bank of U. S. vs. Deveraux, 5 Cranch, p. 90.

The facts and contract in this case bring us directly in line with Gordon vs. Appeal Tax Court, 3 Howard 133. Without going fully into that case here, we would show that in the Gordon case the Legisiature of Maryland provided for the extension of certain bank charters, upon condition that they would subscribe pro rata sufficient to build a turnpike road, "and pay, anuually, to the Treasurer the sum of twenty cents on each $100.00 of the capital stock of each bank actually paid in;" and in consideration of which in the 11th Section of the Act it is provided: "That upon any of the aforesaid "banks accepting of and complying with the terms "and conditions of this Act, *the faith of the State is* "*hereby pledged not to impose any further tax or burden* "*upon them during the continuance of their charters un-*
"*der this Act.*"

3 How., 135.

Under this contract Gordon was adjudged not to be liable for any further tax, by reason of, or upon his shares of stock, in one of these banks, that had accepted the Act.

See reasoning of the Court on pages 145, 146, 147, 148, 149, 150.

Now, we insist that the charter of this Memphis City Ins. Co., and the other charters under consid-

eration here, are equally as strong, and the contract equally as plain and explicit as in the Gordon case.

But it is said that, in the Gordon case, "the "banks had paid a large bonus to the State, larger "than in the charters before the Court, hence the "cases are not parallel." In answer to which we say in Bank vs. Knoop, 16 How. p. 387, of opinion, in answer to a similar attack made on the case of 3 How. 133, this Court says :

"*Whether the consideration paid by the banks was "large or small, we suppose is not a matter for the Court, "as the motives and considerations which induced a sov- "ereign state to make a contract, cannot be inquired into "as affecting the validity of the act.*"

16 How. p. 387, opinion.

Again: Another reason urged by adversary counsel, is that in the 3 Howard case the banks were already organized when the Act of 1821 was passed, and of course the stockholders had to act and accept the amendment, which is not the case in these cases now before the Court; that in these cases the contract was with the artificial *entity* the corporation before there were any stockholders, and hence the stockholder was not dealt with in the contract.

This position, we claim, is unsound, and the reason urged cannot avail. *Because*—

The charter, as passed by the Legislature, was simply a proposition to the corporators and subscribers of stock, and not complete or effective until the stock should be subscribed to a sufficient amount, and the charter *accepted*. By whom was this charter accepted? Of course by each stockholder; first when he subscribed his stock, and secondly, after the stock was subscribed.

The Stockholders met and elected officers under it, and launched the Corporation. Untill then, the Charter Contract was simply a proposition by the State, and not complete.

Again: We insist that under the General Law, there is an overwhelming weight of authority showing that the conclusions of the majority of the Supreme Court of the Tennessee, on the construction of this Charter is erroneous, and state that by plain provisions in this Insurance Company's charter, and under a proper construction thereof, that Company, as a Company, is exempt from any further or other tax than that prescribed in its charter, either upon its franchise, its capital, or its property; and that the capital stock of the Company, in the hands of the Stockholders, cannot be taxed, but is also exempt from taxation, either for State, County or City purposes, under the General Law.

Angell & Ames on Corporations, sections 469, 470, 471, 372, 475, 476 and 478.

Cooley on Constitutional Limitations, pages 127 and 280.

Union Bank vs. State, 9 Yerger, 494–497.

State of New Jersey vs. Bery, 2 Harrison (N. J.) R. 84.

Attorney General vs. Bank of Charlotte, 4 Jones' Eq., 292.

Bank of Cape Fear vs. Edwards, 5 Ired. N. C. R., 516.

Bank of Cape Fear vs. Denning, 7 Ired. N. C. R., 55.

Camden and A. R. R. vs. Halegis, 3 Harrison N. J. R., 71, 72.

City of Memphis vs. Hernando Ins. Co., Tenn. MSS. Jackson, 1872.

Gordon vs. Appeal Tax Court, 3 Howard, U. S. S. C. R., 133.

State vs. Powers, 4 Zabriskei N. J. R. 401, 402.

State vs. Flavel, 4 Zabriskei N. J. R., 273.

State vs. Braenon, 3 Zabriskei N. J. R., 484, 462, 493, 500, 501 and 502.

State vs. Bently, Ib., page 532, 539, 540.

Johnson vs. The Commonwealth, 7 Dana Kentucky R. 343.

Town of New Haven, vs. City Bank of New Haven, 31 Conn. R., 109, 110, 111, 114.

Smith vs. Burley, 9 N. H. R., 423.

Lionberger vs. Rouse, 9 Wallace U. S. S. C. R. page 477, 1 Black., 448, reaffirming, 3 Howard, 133.

State Bank vs. Knoop, 16 Howard U. S. S. C. R., 386, citing and approving, 3 Howard, 133.

There can be no *serious* question that under this charter the franchise of this Company, and its capital stock, is exempted, as against the Company, from further taxation. This question was practically settled in Union Bank vs. State Yerger, 497, as far back as 1836. In the charter of the Union Bank there was a provision that the Bank was to pay annually to the State one-half of one per cent. on the amount of capital stock paid in. The State and County, under the revenue laws of 1835, sought to place an additional tax upon the capital stock. *Held*, that the State had contracted that the Bank should enjoy the privileges conferred, and that a law imposing an *additional tax* upon the capital stock impairs the *contract*, and therefore unconstitutional.

The case was again reviewed, and the doctrine there announced approved by our Supreme Court, at Jackson, in 1872—Chief-Justice Nicholson delivering the opinion of the Court in the case of [Hernando Insurance Co. vs. City of Memphis, MSS.]

Again: This question arose in the State of New Jersey. Here an effort was made by the State and county authorities to tax the property of the Patterson and Hudson River Railway Company. The eighteenth section of the Company's charter is as follows:

"That the said Company, after the expiration of "five years after the passage of this Act, pay to the "Treasurer of this State, yearly and every year, a "tax of one-fourth of one per cent. upon their cap- "ital stock paid in, and every year after ten years, "one-half of one per cent. on the capital stock so paid "as aforesaid, and no further or other tax or impost "shall be levied or assessed upon said Company."

Held: That this was a contract, and exempted both the Company and its franchise and property from any additional tax.

State vs. Bery, 2 Harrison N. J. R., 80.

Again: In North Carolina an attempt was made to tax the real estate of the Bank of Cape Fear. The eleventh section of its charter is as follows:

"That a tax of twenty-five cents on each share of "Stock owned by each individual of said Bank shall "be annually paid into the treasury of the State, by "the President or Cashier, on or before October of "each year; and the said Bank shall not be liable "for any other tax."

Held: That this exempts the Bank from all pub-

lic dues in the character of taxes of every kind, as well county as State, *except that specified.*

Bank of Cape Fear vs. Edwards, 5 Iredell, 515, 517.

Again: In the same State an attempt was made by the State and county authorities to tax the real and personal estate of the Bank of Cape Fear, and for the second time the said 11th section of its charter came under consideration, and it was *held* that under said charter the Bank was exempted from all taxes, State, county and town, and not only the Bank but its property, real and personal.

Bank of Cape Fear vs. Demming, 7 Iredell, 55.

Again: In the same State the same question arose as to the Bank of Charlotte; the 15th section of its charter is as follows: "The president or "cashier of said Bank shall annually pay into the "treasury of the State 12½ cents on each share of "the capital stock, which may have been paid for "and paid in."

Held: That neither the capital stock nor franchise of the Bank could be further taxed under this charter, which is a contract protected by the Constitution of the United States.

Attorney General vs. Bank of Charlotte, 4 Jones, Eq., 292, 293.

Again: In 1853 this question came before the Supreme Court of the United States in case of the State Bank of Ohio vs. Knoop, 16 Howard, 377, for the construction of the 60th section of the General Banking Act of the State of Ohio, which provides "that each banking company under the Act, on accepting thereof and complying with its provisions, shall semi-annually, on the days designated for declaring dividends, set apart for the State 6 per cent.

on the profits, deducting therefrom the expenses and ascertained losses of the company for the six months next preceding, which sum or amount set off shall be in lieu of all taxes to which the company or stockholders therein would otherwise be subject; the said sum set off to be paid to the Treasurer on order of the Auditor of the State." The Piqua Branch Bank organized under the above Act in 1847, and accepted its provisions. In 1851 the General Assembly of the State passed an Act to tax banks and bank stocks the same as other property taxable by the laws of the State, which Act is similar in its provisions to the Act of Tennessee of Feb. 25, 1870; Acts of 1869 and 1870, ch. 81, sec. 1. And in pursuance of said Act an assessment was made upon the capital stock of said bank.

And the Court *held:* That the tax of 6 per cent. named in the Act was in lieu of all other taxes that might be imposed; that neither the company nor the stockholders were liable to any other or further tax; and that the Act of 1851, imposing this tax, impaired the obligation of the contract in the charter of the Bank, and was therefore unconstitutional and void.

There are many other authorities in the Supreme Court of the United States to the same effect.

This same question came before the Supreme Court of the United States in 1844, upon the following state of facts: In 1821 the State of Maryland passed an Act to extend the charters of certain banks of Baltimore, upon condition that they would subscribe and take a certain amount of stock in the Cumberland and Boonsborough Turnpike Company, and pay 20 cents on the one hundred dollars of their capital stock actually paid in, annu-

ally into the treasury, for the benefit of the school fund.

Section 11 of that Act was as follows: "That "upon any of the aforesaid *banks* accepting and "complying with the conditions of this Act, the "faith of the State is hereby pledged not to impose "any other tax or burden upon them during the "continuance of their charters under this Act."

This Act was accepted by the Union Bank of Baltimore, and its charter was consequently extended to 1845. In 1841 the Legislature of the State passed a general revenue Act, providing for assessment and taxation of all stocks or shares owned by any resident of the State, in any banking institution or company incorporated in that State, and upon all other species of property. Under this Act the authorities assessed the stock of the plaintiff in error, Gordon, in the Union Bank, at its valuation, as other property, and sought to collect the tax from the stockholder, and it was taken up to the Supreme Court upon an agreed state of facts, and the Court *held*, "That the 11th section of said Act of 1821 was a contract, and binding upon the State;" and say, "That the power of the State to lay any further tax upon the franchise was exhausted."

"It follows then, as a matter of course, when the Legislature go out of the contract, proposing to pledge its faith, if the banks shall accept the Act, not to impose any further tax or burden upon them, that it must have meant by these words an exemption from some other tax than a further tax upon the franchise of the banks. To confine the pledge to any further tax upon the franchise, surrenders the whole clause as a substantive enactment to a

supposed needless declaration of the Legislature. Not to impose any further tax or burden when used in reference to some tax already imposed, means no other tax besides that to which reference is made."

"And the words, any further tax, used with relation to some other tax, will, by common consent, as it always has been, be intended to mean any *additional* tax besides that referred to, and not any further *like* tax. Having determined that the clause in question was not meant as a pledge against further taxation upon the franchise of the Banks, but it was a pledge against additional taxation. What is the extent of the exemption given by it, or to what does it apply? *Does it exempt the respective Capital Stocks of the Banks, as an aggregate, and the Stockholders from being taxed as persons, on account of their stock? We think it does both.*"

"*The aggregate could not be taxed without having the same effect upon its parts that the tax upon the parts would have upon the whole.*"

Held further, "That both the Bank, as a corporation, and the Stockholders, as persons, were exempt from further taxation."

Gordon vs. Appeal Tax Court, 3 Howard, 146, 147, of opinion.

This case re-affirmed in 16 Howard, 386; also in 1 Black., 436, and other cases.

This question also came up for adjudication in the Supreme Court of the State of Kentucky, in construing the 15th Section of the Act incorporating the Northern Bank of Kentucky, which is as follows:

"That it shall be the duty of the Cashier of the

principal Bank, on the 1st day of July, 1836, and on the 1st day of July in each succeeding year during the continuance of this charter, to pay to the Treasurer of this Commonwealth 25 cents on each $100.00 of stock held and paid for in said Bank, *which shall be in lieu of all tax or bonus;* provided the Legislature may increase or diminish the same, but at no time shall the tax exceed 50 cents on each $100.00 stock paid for in said Bank."

After this charter was granted the Legislature passed a general revenue Act, making all Bank stock taxable as property, against the holders thereof, and assessed and levied a tax upon the stocks of M. C. Johnson, held by him in said Bank, and sought to compel him to pay the taxes thereon. The payment of which he resisted on the ground that it was exempt from taxation under the provisions of the charter of the Bank. *Held*, that under said charter this stock was exempt from taxation, and the Court say, "Such a tax would be unequal, and therefore unjust, and the power to impose it would be inconsistent with the object of the 15th section of the charter, which was intended to secure the stockholders against the consequences of unlimited and capricious taxation of the Bank Stock."

Johnson vs. Commonwealth, 7 Dana, Ky. R., 343.

Again: This question was adjudicated in the Supreme Court of New Jersey in 1852.

State vs. Brannin, 3 Zabriskei R., 492.

In the assessment of tax against one B. Fish, resident of Trenton, N. J., there was included 213 shares of Delaware and Raritan Canal and Camden and Amboy R. R. stock, and this tax sought to be

collected by the State, County and Town. Fish protested against the right of the Assessor to assess these stocks against him, and claimed that under the charters of said corporations this stock was exempt. By the 25th section of the charter of the R. R. Company, under which the exemption is claimed, it is enacted as follows:

"That from and after the completion of the said road or roads, it shall be the duty of the Treasurer of said Company, under oath or affirmation, to make quarterly returns of the number of passengers, and the number of tons of goods, wares and merchandise transported upon the said road or roads, to the Treasurer of this State for the time being; and thereupon to pay the said Treasurer of the State, at the rate of ten cents for each and every passenger, and the sum of fifteen cents for each and every ton of merchandise, so transported thereon; *and that no other tax or impost shall be levied or assessed upon the said Company.*"

The exemption clause in the charter of the Canal Company is the same, and in construing this section of the charter, at page 500 of opinion, the Court say: "These charters are in the *nature* of "executed *contracts*, which the Legislature have no "constitutional power to alter or impair. It is "*settled* that, by the provision of the charters, the "*property* of the company *is exempt*; the companies "are still bound by their contracts to pay to the "State the transit duties, the tax upon their busi- "ness, and the State is equally bound by its con- "tract to exempt them from *further* taxation. *To* "*tax the property and tax the stock is, in effect, to tax* "*the same thing twice over. The stock is the representa-* "*tive of the property; the certificate of stock only evi-*

"*dence of title to the property, and worthless, except as* "*such evidence; and a tax upon the stock is, in fact, a* "*tax upon the property it represents.*"

"Are the stockholders of these companies now "liable to pay taxes upon their *stock? If they are,* "*the exemption clauses were not worth the paper upon* "*which they are written.*"

Held: That these stocks were exempt from further taxation, and the act of the Legislature was illegal and void.

Again: In case of the State vs. Bently, 3 Zabriskei R., 582, a tax was levied and assessed on the *value of the stock in the hands of an individual stockholder* of the Central Railroad Company of New Jersey, and the stockholder claimed that it was exempt under the following provision in the charter of said Company, to-wit:

"That as soon as the net proceeds of said railroad shall amount to six per centum upon its cost, the said corporation shall pay to the Treasurer of the State a tax of one-half of one per centum on the cost of said road, to be paid annually thereafter on the first Monday of January of each year; *Provided*, That no other tax or impost shall be levied or assessed upon the said company."

Held: That under this charter the stock of the company, as well as its property, was *exempt*, and that the assessment was illegal; and the Court say, at page 539 of opinion, that when the capital of a corporation is exempt from a tax by reason of a provision to that effect in its charter, that the stock of the corporation in the hands of its stockholders is also exempt.

Again: The case of the Town of New Haven vs.

City Bank of New Haven, 31 Connecticut R., 111, 114, in the construction of a similar charter, the Court *held:* "That the entire property of the Bank was exempt from any other tax than that specified in the charter." And the Court say: "That the *stock certificate* which each of them holds (meaning the stockholders) is the *muniment* of his *title* specifying his *proportion* of interest in *all* the property of the corporation, and *all* these *certificates* represent the *entire* property of the Bank in whatever form it may exist."

This, by implication, recognizes substantially the *identity of the property and the shares of capital stock by which the property is represented.*"

Page 114.

Again: This question was presented in New Hampshire, and the Court *held:* That to tax the corporation upon its property, and to *tax the shares of stock* at their appraised value in the hands of and against the *stockholders*, would be a *double taxation*, and would be unjust, oppressive and unconstitutional.

Smith vs. Burley, 9 N. H. R., 423.

This clearly recognizes the doctrine that the capital of a Corporation and its Capital Stock are identical in fact; and it follows, that if the *property and Capital of the Company be exempt from taxation as against the Company, the stock in the hands of the Stockholders is equally exempt.*

Again: In the State of New Jersey this question came squarely before the Supreme Court of that State for adjudication. In this case the *stock* of one R. L. Colt, held and owned by him in the Society for Establishing useful Manufactories, was assessed against him for taxation at its value, and he claimed

exemption under the 4th section of said corporation's charter, which is as follows, viz:

"And the more effectually to encourage so useful and beneficial an establishment, be it further enacted by the authority aforesaid, that all the lands, tenements, goods and chattles, to the said society belonging, shall be, and they are hereby, declared to be free and exempt from all taxes, charges, and impositions whatever, under the authority of this State, whether for State or county use, or for any other use whatever; *provided always, that* the said exemption shall not be construed to extend to the private or separate property of any member of the said corporation in his or her individual capacity."

And the Court say: "The principle has been repeatedly recognized, and must be considered as clearly settled, that where an incorporated company is by its charter exempt from taxation, *the stock of the company in the hands of the stockholders is also exempt.* [3 Zabriskei, 502; Ib., 540; 3 Howard, 133; 7 Dana (Ky.) 342; Boston Water Power vs. City of Boston, 9 Metcalf, p. 202 of opinion, 9 N. H. 423.] This was an attempt to tax the stock, at valuation, against the stockholder, (just as it is in the case now before the Court,) and the Court declared that the *body corporate could be subject to no taxation whatever*, either for its *lands*, its *chattles*, or its *franchise*, and that the *stock* of the society held by the prosecutor *was not liable to taxation* under the charter.

I think it clear, upon principle and authority, that under the exemption clause in this charter the property of this Company, and its franchise, are exempt from further taxation or assessment; that the capital and *property* of the Company is exempt

is settled by the law of this State.—[Union Bank vs. State, 9 Yerger, 490.]

That its *franchise* is exempt is as well settled in Tennessee. [City of Memphis vs. Hernando Ins. Co.—MSS. 172.]

And it follows, from the foregoing authorities, and above established propositions, and upon principle, that the stock is also exempt in the hands of the stockholders, by force of the superadded words in lieu of all other taxes and assessment.

The stock certificate is only the muniment of title in the hands of the shareholder; in other words, it is his evidence that upon dissolution of the corporation he is entitled to a certain proportion of its assests and capital. The certificates of the stock are the representative of the entire capital of this Company, real, personal and mixed. The capital and property of this Company and the certificates of stock represent the same thing in reality; and if the property of the corporation is exempt the capital stock is equally exempt. The certificate of stock in an incorporated Company is in *effect* the same thing as a man's title deeds to his realty—merely evidence of title.

We have before said that the *exemption* of property from taxation is a question of *policy* and not *power*. For illustration, a sound currency should be a desirable object to every government; and this is secured in our country generally through the instrumentality of a well regulated system of banking. [16 Howard, 384.] To have home Insurance Companies established, with an aggregate capital sufficient to transact the Insurance business

of a State, or portion of a State, is of prime importance to every State and commercial community. Thereby capital is kept at home, to be used by our planters, merchants and traders, which, but for these home Insurance Companies, would go to some foreign State, in the way of premiums, to foreign Insurance Companies. These Insurance Companies are of quite as much financial importance as many of our Banks; and it is, or should be, as much the policy of the State to encourage them as to encourage Banks.

To establish such institutions as shall meet the public wants, and secure the public confidence, inducements must be held out to capitalists, and even men of small means, to invest their funds. They must know the time the charter has to run, the liabilities of the Company, the rate of taxation, and other privileges necessary to successful banking or insurance operations.

It requires inducements to procure subscriptions of stock to Insurance Companies. The business is hazardous. Men must have inducements to invest their money in an enterprise where the entire *profits* of *years*, and often the entire capital, is swept away by the conflagration of a single night.

So we say that it was the intention of the State in granting these charters, and the understanding of the stockholders in receiving them, that the *exemption* from taxation and *assessments* of every kind should be full, and cover everything except the specified rate. And we further say that these charters were granted through policy and for the public good.

Lastly we say, there can be no doubt or trouble in the construction of this charter; it is plain and explicit. It provides for the payment of *one-half of one per cent.*, which shall be "*in lieu of all other taxes and assessments.*" The language employed is broad and comprehensive; it covers not only taxes, but *assessments.* The word assessment is broader than taxes, and we think shows the intention of the Legislature to relieve the Company and its property and capital stock from every species of burden in the way of taxation beyond that specified.

This charter is stronger than any one that we have reviewed in this argument, and stronger and more comprehensive than any one of the charters before this Court, for construction in these cases.

V.

It is well settled that this Court is not bound by the construction which the Supreme Court of the State of Tennessee has placed upon these Charter Contracts between the State and the several Companies or Corporations, and Stockholders; and that *this Court will* for itself construe and interpret these contracts for exemption, independently of the State *adjudications* on the question.

1 Black., 436.

16 Howard, 190, 369, 432.

18 Howard, 331, 380.

15 Wallace, 460.

VI.

If we have shown that the *State* is, by its contract, *estopped* from further taxing this Company, its

property or franchise, or the stock in the hands of its Stockholders, we say that it follows that the County of *Shelby* and City of *Memphis* are also estopped. The County and City are mere *auxiliaries* or *agencies* of the *State*. If the State be estopped the County and City are both estopped as well. The *creature* has no more power than its *creator;* the agent no more power than his principal. This proposition is too clear for argument, and is settled by authority.

The State has agreed that this Company shall be exempt from all other taxes and assessments—*except* as *stipulated;* and this must necessarily operate as a prohibition against imposition of taxes, either by the County or City governments.

Cooley on Cons. Lim., pp. 118–127.
City of Memphis vs. Hernando Ins. Co., MSS-, Jackson Term, 1872.
Mayor and Aldermen of Nashville vs. Thomas, 5 Cold., 602.
3 Harrison, 13.
2 Harrison, 80.
7 Iredell, 57.
6 Coldwell, 602.
9 Yerger, 490.
City of Mempdis vs. Jackson Ins. Co., MSS., Opinion Supreme Court of Tennessee, 1872.

MYERS & SNEED,
of Counsel for Pltf. *in error.*

By D. E. Myers